

4-1979

12.54 Seconds: Was the Kent State Shooting Justified?

Michael Allen Mello

Follow this and additional works at: https://scholar.umw.edu/student_research



Part of the [History Commons](#)

Recommended Citation

Mello, Michael Allen, "12.54 Seconds: Was the Kent State Shooting Justified?" (1979). *Student Research Submissions*. 18.
https://scholar.umw.edu/student_research/18

This Honors Project is brought to you for free and open access by Eagle Scholar. It has been accepted for inclusion in Student Research Submissions by an authorized administrator of Eagle Scholar. For more information, please contact archives@umw.edu.

This is to certify that

"12.54 Seconds: Was the Kent State Shooting Justified?"

by

Michael Allen Mello

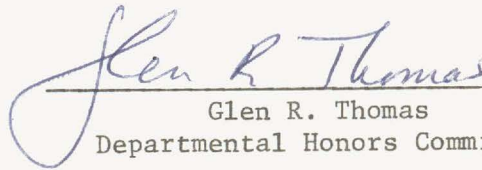
has been approved for

Honors in History

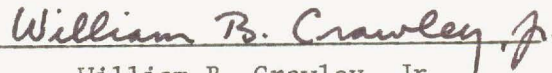
April, 1979



Arthur L. Tracy
Departmental Honors Committee



Glen R. Thomas
Departmental Honors Committee



William B. Crawley, Jr.
Department Chairman

12.54 SECONDS: WAS THE KENT
STATE SHOOTING JUSTIFIED?

- by -

MICHAEL ALLEN MELLO
----- 1979 -----

T o H a r r i e t

CONTENTS

	<u>Pages</u>
PART ONE - INTRODUCTION	1-22
PART TWO - WAS THERE A LIFE- THREATENING MOB?	23-132
PART THREE - WAS THERE A SNIPER?	133-211
PART FOUR - CONCLUSIONS	212-216
CHRONOLOGY	217-228
NOTES: {for PART ONE	230-234
{for PART TWO	234-242
{for PART THREE	242-246

PART ONE

INTRODUCTION

It was no trick to find the facts to back up the impression or preconceptions: facts were everywhere, and with suitable discrimination could be used to support almost any argument.

Ward Just
To What End? {1968}

In this paper I shall examine the large question: was the May 4, 1970 shooting at Kent State University by elements of the Ohio National Guard justified? The word "justified", because of its many meanings and nuances, requires clarification. For the purposes of this paper, "justified" will be used in a legal sense, and in so doing I shall apply the Ohio National Guard's own connotation of the term, as expressed in their training manuals. According to Annex F to OPLAN 2, {Rules of Engagement}, troops may discharge their weapons during civil disturbances if one or both of the following conditions exist: First, "snipers will be fired upon . . .". Second, shooting may be justified "in any instance where human life is endangered by the forcible, violent actions of a rioter."¹ In other words, Guardsmen may fire in self-defense or to protect another's life. Another National Guard Manual puts it more succinctly: "I will fire to save my life or when returning fire."²

Further, if one or both of these conditions does exist, the Rules of Engagement provides that a particular procedure must be followed. This procedure demands, first, that "minimum force" be applied at all times.³ Brigadier General Sylvester Del Corso, the Adjutant General of the Ohio National Guard in 1970, told the President's Commission on Campus Unrest that "a weapon is only a last resort."⁴ A six-point sequence of escalating force {which includes the use of tear gas and rifle butts} must be employed before the ultimate step of lethal force may be applied. Secondly, the firing must be directed towards the impetus of the danger: The Rules of Engagement states that "indiscriminate firing of

weapons is forbidden. Only single aimed shots at confirmed targets will be employed."⁵ Thirdly, in sniper situations, the Ohio National Guard employs a special procedure which I shall detail later in this paper.⁶

Thus, the shootings at Kent State will be considered justified if, at the time they occurred, the National Guard was in mortal danger either from rioters or from a sniper, and if the Guard followed its own proper procedures in dealing with these dangers.

The official position of the Ohio National Guard has always been that the troops who fired were indeed justified because they were in mortal danger. Their After Action Report stated that the troops were "in mortal danger from which they could extricate themselves only with gun fire".⁷ Jean Felter, Inspector General, State of Ohio, concluded his investigation into the shootings at Kent State by stating that "the Guardsmen used proper means to defend themselves."⁸ Brigadier General Robert Canterbury, the highest ranking Guard officer present on Blanket Hill when the firing took place, made the following statements at a press conference on May 5, 1970:

Q. What about a sniper, sir?

A. We know that there is every possibility that the troops were shot at . . . I did hear a single shot preceding the Guard volley.

Q. General, the Guard is authorized to fire if their lives were in danger. Is rock throwing considered such a danger?

A. Considering the size of the rocks and the proximity of those people throwing them,

I would suggest in this case that their lives were in danger . . . there were several hundred rioters and there isn't any question at all that in all probability {the Guardsmen} could have been overrun.

Q. How close were the rioters, General?

A. The nearest rioters were probably in a distance of 10 to 12 feet at the time.

Q. How many Guards were injured with rocks?

A. Every Guardsman up there was hit by rocks . . . almost everyone of them had bruises of some kind.

Q. How many are hospitalized?

A. Two at this point.

Q. Did you feel that even your life was in danger?

A. I felt₇ that I could have been killed out there.

Hence, General Canterbury claimed that both of the sufficient conditions for firing outlined in the National Guard's Rules of Engagement, and discussed earlier in this paper, were present at the time of the Kent State shooting. First, the troops were fired upon by a sniper. Second, human life {the lives of the Guardsmen themselves} was imperiled by the rioters; the troops were surrounded and receiving a barrage of rocks. The remainder of this paper, particularly the next two sections, shall consist of an examination of these two claims.

THE KENT STATE LITERATURE

Few events in recent American history have aroused such a copious archive as has the slaying of four white, middle-class

students on the Ohio campus of Kent State University. Most of this literature, parts of which will be quoted in this paper, directly examined the thesis question of this paper. Thus, a brief survey is in order.

The FBI Investigation: On May 5, 1970, an official in the Civil Rights Division of the United States Department of Justice contacted J. Edgar Hoover, Director of the Federal Bureau of Investigation. The Justice Department requested an FBI investigation into the shootings at Kent State, and the search for information initiated that day was indeed massive. Over 100 FBI Special Agents supported by a staff of twice that number set up shop in the KSU gymnasium and for seven weeks compiled a massive file on the events leading up to the shootings.¹⁰ Special Agent Martin Hale, who directed the investigation and organized the 7,500 page FBI report to the Justice Department, testified in 1974 that "the purpose of our investigation was to attempt to locate and identify all possible subjects, witnesses and victims for the interviews along with any persons who might have had any knowledge about the case, any physical evidence and any photographs and so forth."¹¹ The FBI was able to interview all 100 Guardsmen present on Blanket Hill at the time of the shootings, an advantage most other investigations of the Kent State tragedy lacked.

Unfortunately, for this writer and for history in general, this report has never been made public. Bits and pieces of it have leaked out at the various Kent State-related trials and official hearings, but as yet no private citizen has been able to quote

from it. The best insight into the contents of the report is a summary of its highlights which was prepared by the Director of the Justice Department's Civil Rights Division. This summary was read into the Congressional Record by Senator Stephen Young {D-Ohio} and was reprinted in full in I. F. Stone's book The Killings at Kent State.¹² The summary concluded that the Guardsmen's lives were not imperiled by a mob of students": "The Guardsmen were not surrounded . . . only a very few students were located between the Guard and the Commons. They could easily have continued in the direction in which they had been going . . . the nearest student was 60 feet away."¹³ Further, "there was no sniper . . . the FBI has conducted an extensive search and has found nothing to indicate that any person other than a Guardsman fired his weapon."¹⁴

This summary, it must be remembered, is only one person's interpretation of the 7,500 page FBI report. Another person might read the same raw material and draw radically different conclusions. This, in fact, has happened: The Ohio Special Grand Jury had access to the entire FBI report and yet exonerated the Guard and indicted 25 civilians for "riot". Conversely, the Scranton Commission, which also had access to the FBI report, condemned the shootings as "unnecessary, unwarranted and inexcusable."¹⁵

The Highway Patrol Investigation: The Ohio State Highway Patrol conducted its own investigation into the disorders at Kent State. Lieutenant Donald Greenlee directed this probe, which was in many respects similar to the FBI investigation: the Highway

Patrol was able to interview Guardsmen, its final report was massive, and it has never been made public. If there is any detailed information about this document available to the public, this writer was not able to find it.

The Ohio Special Grand Jury: In July of 1970, the Attorney General of Ohio, Paul Brown, convened a Special Grand Jury to "investigate the incidents occurring at Kent State University and the city of Kent from May 1-4 inclusive and to determine whether any offenses had been committed which were punishable under the laws of the State of Ohio".¹⁶ As previously noted, this Grand Jury found the Guardsmen guiltless and indicted 25 students for varying degrees of "riot". The most extraordinary aspect of the Special Grand Jury Report, however, was an obiter dicta in which the jury lambasted students, faculty and administrators in general and those of Kent State in particular. On the question being examined in this paper, the Special Grand Jury found:

. . . that those members of the National Guard who were present on the hill . . . fired their weapons in the honest and sincere belief that they would suffer serious bodily injury had they not done so . . . they were on the defensive and had every reason to be concerned for their own welfare . . . these {Guardsmen} were surrounded by hundreds of hostile rioters {and} were forced to retreat back up the hill toward Taylor Hall under a constant barrage of rocks and other flying objects . . . evidence has established, beyond any doubt, that as the Guardsmen approached the top of the hill adjacent to Taylor Hall, a large segment of the crowd surged up the hill . . . approaching to within short distances of the rear ranks of the Guardsmen. ¹⁷

The Special Grand Jury report made no mention of the presence or absence of snipers.

The report as a whole, and particularly the obiter dicta, has received a great deal of criticism since its appearance on October 16, 1970. The report provided grist for numerous student papers {which are on file in the Kent State University archives},¹⁸ the Kent State Faculty Senate published a 28-page critique of the report,¹⁹ and every major book on the Kent disturbances deals with it at length. James Michener summed up these criticisms of the obiter dicta:

"The gratuitous essay had these grave faults. {1} most of what it said was erroneous in that conclusions were reached contrary to the evidence; {2} it intruded upon the problems of governing a university when the members of the jury knew little about the matter and appeared to rely upon the prejudices of their community; {3} the National Guard was exonerated on the basis of certain evidence when there was a mass of other evidence pointing to the fact that it shared responsibility."²⁰

Both the indictments and the obiter dicta were challenged through two civil suits filed in Federal District Court in Cleveland. On January 28, 1971, Federal Judge William Thomas, while upholding the indictments, ruled that the obiter dicta was unconstitutional and ordered it physically destroyed.

The Federal Criminal Trial: In early 1974, a Federal Grand Jury indicted eight National Guardsmen who fired their weapons on May 4, 1970, for conspiracy to violate the civil rights of the dead and wounded students. The Guardsmen were charged under Sections 241 and 242 of the United States Criminal Code, Title 18. This point must be stressed: The Guardsmen were being

tried for conspiracy, not for murder or manslaughter or the negligent discharge of weapons.

Ironically, the federal criminal trial that had taken four and one-half years to begin, lasted only ten days. On November 9, 1974, U. S. Federal District Judge Frank Battisti acquitted the eight Guardsmen of the charges, ruling that the federal government had failed to prove its case beyond a reasonable doubt.

The 4,000 page transcript of this trial, U. S. v. Shafer, et al., remains one of the best sources of raw material on the Kent State shooting. Thirty-three witnesses, including all of the wounded students, testified under oath about their involvement in the tragedy. Most of these witnesses did not testify at the Kent State civil trial in 1975, and their testimony at U. S. v. Shafer, et al., is the only available record of their involvement in and perceptions of the Kent affair.

This transcript, while being invaluable for purposes of comparison to other sources, is not in itself definitive: no Guardsman testified at the trial. Further, it must be recalled that the criminal trial, as well as the civil trial a year later, took place four and five years respectively after the shooting. Memories can become distorted or blurred during the passage of almost half a decade, particularly when the event has received as much media coverage as has the shootings at Kent State.

The Civil Trial: The history of this \$46 million civil litigation, which has to date lasted eight years and is still in the courts, is far too complex to discuss here in any detail. Krause,

et al. v. Rhodes, et al. placed, for the first time, the enlisted Guardsmen, Guard officers, Governor Rhodes and former KSU President White as defendants against the wounded students and parents of the dead. After fifteen weeks of testimony, the jury acquitted the defendants. The Ohio Court of Appeals later nullified that judgment and ordered a new trial, which will take place in October, 1978.

The transcript of this trial, a 26-volume document that totals almost 16,000 pages, is the richest single source of material open to the public on the Kent State shootings. Few restrictions were placed on the introduction of evidence, and as a result the scope of testimony and evidence is extremely wide. Everything is there and much of the material presented in this paper was found in Krause, et al. v. Rhodes, et al.

This source, of course, suffers from one significant defect: the testimony presented in it was given five years after the fact. But this liability is more than offset by the positive historical value of the transcript: here are the actors, Guardsmen as well as students, testifying in their own words and under pain of perjury, about what occurred on May 4, 1970.

The Scranton Commission: On June 13, 1970, President Richard Nixon announced the convening of a commission to examine campus disturbances in general and the shootings at Kent State and Jackson State. He appointed former governor of Pennsylvania, William Scranton, as chairman and empowered him to subpoena witnesses. The commission examined the FBI and Ohio Highway Patrol reports

and held three days of hearings in Kent.

The Scranton Commission concluded that while some Guardsmen were frightened, "the indiscriminate firing of rifles into a crowd of students and the deaths that followed were unnecessary, unwarranted and inexcusable . . . The 61 shots by 28 guardsmen certainly cannot be justified."²¹ The sniper claim is also apparently dismissed, though on this matter the Scranton Commission is less than explicit.²³

These conclusions unleashed an avalanche of criticism of the Commission; like most of the criticism of the Ohio Special Grand Jury, many of the barbs thrown at the Scranton Commission were unfounded and unjustified. But at least three matters do merit examination. First, the Commission was operating under a time limit;²⁴ President Nixon had stipulated that the Commission's report be submitted by October 1, 1970. This is particularly significant in light of the fact that their investigation into the Kent State shooting was only one aspect of the Commission's charge; the bulk of their report is an analysis of campus unrest in general. Second, the hearings held in Kent were not particularly illuminating. Precious time was wasted on witnesses with little knowledge or helpful information relating to the shooting itself; few probing questions were asked. Third, none of the Guardsmen who fired their weapons testified.²⁵ While it is true that the Commission did have access to the FBI and Highway Patrol interviews with the Guardsmen, nothing can replace live testimony and interaction.

The KSU Commission [Minority Report]:²⁶ This document represents an attempt by a group of students and faculty to write a history of the events that thrust their campus into the national consciousness. Division within that Committee is reflected by the fact that the volume is entitled "minority report"; a "majority report" was never issued. The commission does not offer conclusions of its own. The report is valuable because it includes much information from people who did not testify before any other official body. For my purposes, the major liability of the report is the fact that the committee's working papers are still considered "confidential" by the University, and hence not open to the public.

James Michener's Kent State: This 559-page book, the only work on the Kent tragedy written by an internationally renowned writer, is today generally accepted as the definitive study of the shooting. Even at Kent State itself, Michener's book is the most frequently cited in discussions, and polls indicate that if an individual is interested in studying "May Fourth", chances are that he will first read Michener's Kent State.²⁷

The book itself deals with three aspects of the drama at Kent State. First, there is a minute-by-minute recreation of the events themselves. Michener, unlike most other writers, devotes much of his work to detailing the events of the three days prior to May 4, and this chronology does much to place the shooting into some sort of context. Second, there is the larger social and political meaning. Third, Michener examines the broad, philo-

sophical question raised by the shootings: what place should a university have within the American culture? I shall not comment on points two and three, tempting though it is.

Michener concluded that "the Guard was in no mortal danger at the time of the firing, for the nearest students were at least twenty yards away and in no menacing number . . . There was no sniper . . . The National Guard was in control at all times and present in sufficient numbers as to protect its members from critical assault."²⁸ But Michener is convinced that the Guardsmen "perceived themselves as being in danger . . . he could very reasonably think that he was about to be attacked by 'a howling, vicious mob prepared to tear him apart'".²⁹

Kent State has several serious flaws. The historian must immediately question the work on five grounds: Firstly, Michener was not able to interview any of the Guardsmen who actually discharged their weapons on May 4, 1970.³⁰ Secondly, Michener writes that all quotes in the book are "as accurate as memory and sometimes sketchy notes permit."³¹ This writer finds it inconceivable that a world-renowned author, a winner of the Pulitzer Prize, who was working under an endowment from Reader's Digest, could not purchase a tape recorder in the interest of accuracy. Thirdly, the book is totally without footnotes or bibliography. Michener quotes from newspaper accounts and publications, but nowhere does he cite page or volume numbers and often he does not even give dates. Fourthly, Michener ignores ten of the twelve students who were wounded by Guardsmen's gunfire: He mentions only Doug Wrentmore and Donald

McKenzie, who were not seriously injured.³²

The actions of all nine student who were wounded {some quite seriously} on May 4, 1970, is certainly important to include in any study of that day which purports to be complete. This omission is particularly important in light of the fact that at least two students Michener ignores had been harassing the Guard earlier in the day. Dean Kahler threw a rock at the troops when the Guard was positioned on the practice football field,³³ and Alan Canfora waved a black flag in the faces of several Guardsmen during this same period.³⁴

Fifthly, Kent State, since it appeared before either the civil or criminal trials were convened, does not draw from those sources.

Two Kent State professors, Carl Moore and D. Ray Heisey, have written a devastating critique of Michener's Kent State;³⁵ this critique, unfortunately, has never been published. These two professors contacted "every person whose actions were described or was quoted by Michener . . . Two hundred questionnaires were sent out to these individuals, inquiring into Michener's method of recording testimony and asking if the book was accurate . . . {Even} a casual reading through the responses made it quite apparent that misquotation and distortion of what had been said were not isolated instances."³⁶ The personages who "comprise the main fabric of Kent State believe that there are errors in the form and the substance of Michener's work and that the errors stem from Michener's carelessness as a researcher, from his predispositions regarding what took place, and from his desire to build

a dramatic account . . . James Michener is primarily a novelist and not a historian."³⁷ Neither are Doctors Moore and Heisey historians: both are professors of speech, but then their work does not claim to be a work of history.

Moore and Heisey also report that "some of those who were critical figures in the work were never interviewed by Michener."³⁸ Further, "Michener attributed direct quotes to people without checking with them. This is doubly significant since the people would have been available."³⁹ Moore and Heisey support these contentions with numerous examples, and their files at Kent State contain many more.

Thus, on the whole, Kent State must be rejected as a definitive or even conclusive study of the tragedy at Kent. Yet I hesitate to state that the book is totally discredited and worthless, because on occasion Michener does exhibit the insight and perceptiveness which has made him a best-selling novelist. Several of these appear later in this paper. But these moments are rare, and the sum total of the book is unacceptable.

Peter Davies' The Truth About Kent State: This book is an excellent example of advocacy journalism. It was written with a very specific intent: to convince the federal government and the American people that the shootings at Kent State were premeditated murder, that several Guardsmen agreed approximately ten minutes before the shooting to "teach those snot-nosed kids a lesson" and that a Federal Grand Jury should be convened to investigate these

charges. Michener believes essentially the same things, although he does not name specific Guardsmen as does Davies. The latter was so explicit that one Guardsman, Myron Pryor, sued Davies for libel.⁴⁰ On the questions raised in this paper, Davies is equally blunt, "There was no mob. There was no sniper".⁴¹

Davies' major contribution to the Kent State literature is his analysis of the photographic evidence relating to the May 4 tragedy. The book of course, is partisan and as a result distorts its subject matter to a certain degree. Davies apparently used exclusively secondary sources; he relies particularly strongly on Michener. Details that reflect badly on the student-victims are occasionally softened. Davies makes a point of noting that the Guard Chaplain, Major John Simons, disapproved of the shooting "by his men" without mentioning the fact that Major Simons was on the Commons when the firing occurred, 500 feet from the Guard unit that did the shooting.⁴² And Davies, like Michener, could not draw on the criminal or civil trials.

Joe Ezherhas and Michael Robert's 13 Seconds:⁴³ This work purports to be an "objective" presentation of the Kent affair. Both authors write for the Cleveland Plain Dealer, and the book reads like a 300 page news story. The book is based primarily on interviews conducted by the two authors, including interviews with some Guardsmen who admitted having fired their weapons. Primarily through quotes, they purport to show that, with one exception, the Guardsmen felt that they were being threatened but were not in danger of being killed. This conclusion will appear

absurd in light of the material presented in the second section of this paper. The one exception was General Canterbury, cited earlier. Eszterhas and Roberts also seem to conclude that there was no sniper.⁴⁴

This book has several defects. First, it contains many factual inconsistencies and questionable statements. For example, the authors describe a 1968 Kent State sit-in. On page 14, 80 black students and 75 white students are said to have participated in the demonstration. But on page 42 the numbers become 200 and 150 respectively.⁴⁵ Eszterhas and Roberts also write that after the shooting, "all longhairs on nearby roads are being spread-eagled against cars and searched."⁴⁶ Did these authors manage to locate and interview all "longhairs" in the Kent area during the period immediately after the shootings? This kind of hyperbole is characteristic of the book. Second, the authors rarely cite the sources for their information. For example, they write that "a total of twenty-six {Guardsmen} had fired fifty-nine shots"⁴⁷ without stating the origin of those figures. These figures conflict with the conclusions of other researchers into the Kent tragedy: the FBI, for one, found that "a minimum of 54 shots were fired by a minimum of 29 Guardsmen."⁴⁸ Further, Eszterhas and Roberts quote the statements of Major John Simons, Chaplain of the National Guard units on duty at Kent State on May 4, 1970.⁴⁹ Perhaps it is coincidence, but their quote from Simons matches, almost word for word, an Akron Beacon-Journal quote of Simons. The Akron Beacon-Journal quote appeared in the May 24, 1970, issue of

that newspaper, almost six months before 13 Seconds was published.⁵⁰

The third flaw of this book is that it went to press before the Scranton Commission held its open hearings in Kent {to say nothing of the civil or criminal trials}. Consequently, Eszterhas and Roberts ignored an important body of data which would have improved their study. For example, these writers do not seem to have been able to interview two crucial actors in the events at Kent State: Brigadier General Robert Canterbury, Commander of the Guard contingent present in Kent on May 4, 1970, and Major General Sylvester Del Corso, Adjutant General of the Ohio National Guard. Both of these men testified before the Scranton Commission.

Ottavio Casale and Louis Paskaff's The Kent Affair:⁵¹ The authors are both professors of English at Kent State University, and the book is a compendium of documents. It is particularly useful in that it gathers in one place many of the important political cartoons, news stories and official documents dealing with the shooting. Further, it contains many of the letters which appeared in newspapers and were sent to the parents of the dead students, reflecting the polarization that took place after May 4, 1970. The authors do not draw conclusions of their own from the material they present.

Phillip Tomkins and Elaine Anderson's Communication Crisis at Kent:⁵² These authors, graduate students at Kent State, conducted interviews with a university sample of 225 students, 120 faculty members, 29 departmental chairmen and 11 administrative

officials, including President White. This study centered on perceptions of the larger meaning and significance of the shooting, and hence is not particularly relevant to this paper.

Stewart Taylor's Violence at Kent: The Student's Perspective:⁵³

This study, also conducted by a graduate student, is similar to the Taylor and Anderson inquiry discussed above. This study, however, used a larger sample space and took place at a time when there was little student interaction [late June, 1970].

Bill Warren's The Middle of the Country:⁵⁴ This is a collection of rapidly written essays, printed double spaced and with typographical errors. Warren saw this work as ". . . an effort to provide America with as representative a guide as possible to what actually happened leading up to and culminating in the action of May 4."⁵⁵

This book falls shorter of that goal than does any other book in the extensive literature dealing with the Kent tragedy. Several of the essays were written by individuals who do not appear to have been witnesses to the shooting;⁵⁶ others are emotional, almost hysterical, tirades. A few essay titles will illuminate the tone of this book: "A Document of Rage," "The Shit Comes Down on Kent," "The Ends of Repression." The strength of this small book is that it reflects, through occasionally brutal comments, the emotional impact of the shootings on the students of Kent State University. However, the book should not be used as a factual source.

Ed Grant and Mike Hill's I Was There: Both authors were Guardsmen at Kent State on May 4, though neither was assigned to the unit that fired, and the reader is not even sure if they were eyewitnesses to the event. The book deals more with the days of disorders preceding the shooting than with the shooting itself.

The book is a study in selective perception and hence distortion by omission. For example, Grant and Hill present the Ohio Special Grand Jury's obiter dicta as fact,⁵⁷ without mentioning that a federal court declared it unconstitutional and ordered it burned. But the work does offer some insight into what Guardsmen were doing and thinking during the two days prior to the shooting.

I. F. Stone's Kent State: How Murder Went Unpunished: The first half of this work is a reprint of pieces in his October, November and December newsletters. The second half of the book is a reprint of several Kent State related documents, including the full text of the Justice Department's summary of the FBI report.

As is evidenced by the title of his book, Stone believes that the shooting constituted "murder". But he fails to adequately support this charge; he suggests that the Guardsmen thought up their self-defense claim after the fact but Stone, like Davies and the Government in U. S. v. Shafer, et al., does not come close to proving that Guardsmen conspired to commit first degree murder on May 4, 1970.

There was not much to Stone's essays, but what there was contained inaccuracies. For example, he writes that the Scranton

report "shows the link between the governor's inflammatory attack on the students [on the night before the shooting] and the primary election two days later."⁵⁸ This is not quite true. The Scranton Commission stated that "Many persons felt that the governor had spoken firmly and forthrightly . . . Some, including many Kent students, believed the governor was hoping that his words and actions at Kent would win him additional votes in the primary election, to be held two days later for the nomination to the U. S. Senate."⁵⁹ The Commission itself drew no conclusions on the matter, and certainly established no "link" between Rhodes' speech and the upcoming election.

This survey of the Kent State literature leads this writer to two conclusions: First, a tremendous number of words have been written on the issue, many by such figures as James Michener and I. F. Stone. All of these works contribute, to a greater or lesser degree, to a total understanding of the events of May 4, 1970. Second, in spite of this fact, much more needs to be said. Several of these works contain fatal flaws. With one exception, all of the books dealing with the Kent State tragedy appeared before U. S. v. Shafer, et al., and Krause, et al. v. Rhodes, et al., the two richest sources of information on the events in question. This is the ultimate justification of this paper.

It is important to acknowledge the limitation of this study. First, there were certain crucial sources which I was unable to examine. Despite strenuous efforts, I never gained access to the FBI report, the working papers of the KSU Commission on Violence

or the report of the Ohio Highway Patrol. This limitation, while being important, is not fatal to any writings on the subject of Kent State, nor does it render my conclusions meaninglessly incomplete. Beside it must stand the fact that I was allowed access to a massive amount of primary source material, particularly the full transcript of Krause, et al. v. Rhodes, et al. and U. S. v. Shafer, et al.

The second limitation under which this paper labors has to do with perspective. The events of May 4, 1970, occurred less than a decade ago, and thus it is perhaps too soon to place them into proper historical context. Yet the essential aim of this paper was not to assess the ultimate importance or significance of those events: rather, I sought to determine precisely what happened; I was to borrow a phrase from television, "looking for just the facts". I will leave it to future writers to take the long view on the meaning of those facts.

Finally, this paper, like all works dealing with controversial subjects, was confronted with the problem of objectivity. I am a college student writing about an event that resulted in the deaths of college students and this, while giving me a certain perspective and insight that an older writer might have lacked, also possibly led to a degree of bias. All I can say is that I have been acutely aware of this problem from the outset and, as a consequence, have been able to combat it. In any event, I wish to make it explicit at this point that any conclusions I make are judgments in history alone. It is not my purpose to condemn; as Herman Hesse wrote thirty years ago, "we prefer neither to morally judge nor to convert, but rather to tell."⁶⁰

I cannot claim absolute objectivity, but I have made a conscious attempt to approach my subject without preconceived notions. The reader will be the ultimate judge of my success or failure.

PART TWO

WAS THERE A LIFE-THREATENING MOB?

"Yes."

General Robert Canterbury
Asst. Adjutant General
Ohio National Guard

"No."

Dean Kahler
Student
Kent State University

This section is composed of five component parts, each directly related to these questions: were the lives of the Guardsmen of G Troop and A Company imperiled by a life-threatening mob of riotous civilians when the former fired and, if so, how did the troops respond to that threat? First, I shall present all available testimony on the matter. Secondly, I will offer possible reasons for discrepancies in that testimony. Thirdly, there will be a discussion of photographic evidence: still and moving films of the shooting and the period immediately prior to the shooting. Fourthly, I shall present miscellaneous aspects of the question at hand which do not fit into any other category. Finally, I will address the matter of firing procedure.

Brigadier General Robert Canterbury was the highest ranking officer of the Ohio National Guard present at Kent State University on May 4, 1970. The General was near the front of the Guard formation, approximately 50 yards away from the contingent of men who turned and fired.¹ Canterbury, whose comments at a press conference on May 5th have already been noted, testified before the Scranton Commission that moments before the shooting occurred "the mob started closing in on the troops, several hundred were closing in on our right flank. These people were charging. Some of them were very, very close to our troops. They were yelling 'kill the pigs' . . . the conditions and the degree of danger of those people on the right flank at that point was such that I believe that most of the members of this Commission would have fired if they had been there . . . the closest students were within 12, 15 feet . . . 300 were between the parking lot and

the Pagoda."² The General said essentially the same thing at Krause, et al. v. Rhodes, et al. with two exceptions. First, he clarified his testimony before the Scranton Commission by stating that the Guardsmen "were not surrounded" by the "mob".³ Second, he commented that he "didn't feel that {his} life was in immediate danger."⁴

SP4 James Pierce of G Troop fired his rifle four times on May 4, 1970. At Krause, et al. v. Rhodes, et al. he testified as follows:

- Q. Take this direction, from the shelter looking towards the Commons area . . . you yourself didn't feel threatened or surrounded from that area, did you?
- A. No.
- Q. Was there any assaulting of you by rocks coming from the direction in front of you before you turned?
- A. No.
- Q. You felt a genuine fear for your life?
- A. Yes sir . . . I was defending my life.
- Q. How many students were in this quadrangle that I am drawing. Say, from the sculpture to the sidewalk to the Pagoda to the corner of Taylor Hall. How many students would you say there were in that whole area at the time when the first shot rang out?
- A. Hundreds . . . several hundreds.
- Q. Were those students rushing you?
- A. That's true . . . I perceived them as someone who was trying to kill me. I didn't perceive them as being students or people.

- Q. You perceived them as savage animals?
- A. If you want, yes, if you want to use that terminology.
- Q. Sir, were any rocks coming as far as you were up on the line where the firing took place?
- A. Yes . . . I felt I was getting bombarded from all directions . . . it was like they had us going and they were trying to run us down . . . I felt I was trapped.
- Q. Why did you fear for your life?
- A. Because I thought I was going to get killed . . . I thought that was the intention of the people.
- Q. How many times did you fire your weapon?
- A. I fired four times, one warning shot and three others. The first was the warning shot. The second shot that I fired was in the direction of Taylor Hall . . . He was standing out of the crowd with his arm drawn and getting ready to heave another stone or rock.
- Q. You saw a stone in his hand?
- A. Yes.
- Q. How far away from you was he?
- A. 15, 20 feet.
- Q. Did you hit that person with the bullet?
- A. I have no idea.
- Q. Then you turned your rifle to someone else?
- A. Not to a specific individual, just directly in front of me . . . Just at the crowd.
- Q. Where did you fire the third shot and at whom?

- A. The third was directly in front of me in the mass, no certain people.
- Q. Where was the fourth shot fired? Was that at a particular individual?
- A. Yes . . . he was 30, 40 feet away, a large black man . . . he had his arm raised with a rock . . . I felt he was a threat to me and I fired in that direction. 5

E5 Lawrence Shafer, a staff sergeant in G Troop, fired his weapon either three or five times. He told the Ohio Special Grand Jury that he fired three rounds,⁶ but at the civil trial in 1975, he admitted having fired five shots on May 4, 1970. Shafer testified at Krause, et al. v. Rhodes, et al. as follows:

- Q. Between the Pagoda and the Commons, did you see any large crowd anywhere?
- A. There was a number of people down along the Johnson Hall area at the time.
- Q. That would be roughly 200 feet from your position?
- A. I would say more in the proximity of 150 feet.
- Q. Was there anyone within 50 or 100 feet from you, ahead of you?
- A. A few.
- Q. But nobody that was presenting any special fear to you from that direction? Is that a fair statement?
- A. Yes, sir.
- Q. How about over to the left?
- A. No, sir. I didn't look to my left.
- Q. So that there was no fear or apprehension to you from that direction? Is that a fair statement?

A. Yes, sir.

Q. Did you see that there were some people on the {Taylor Hall} veranda?

A. Yes.

Q. Did they in any way constitute any particular danger or threat to you from anything they were doing with their hands or any objects?

A. No.

Q. Was there anyone, besides Guardsmen, between yourself and the corner of Taylor Hall?

A. No.

Q. Did you see anybody between the sidewalk and the corner of Taylor Hall?

A. Yes.

Q. How many?

A. Quite a number, sir . . . approximately a hundred.

Q. How close were you to the closest persons in that area?

A. I would guess . . . 45 feet . . . there was a mass coming up.

Q. You fired five rounds?

A. Yes, sir.

Q. Where did you fire your first shot?

A. Into the air.

Q. Where did you fire your second shot?

A. I observed an individual coming toward us with his left hand where he was giving the finger. He had his right hand down to his side partially behind him. I fired at this individual because I felt at this

point that, not knowing what he had in his right hand, my life was in danger. {Note: the FBI identified this student as Joseph Lewis.}

Then I fired three more rounds in the air.

Q. How far away from you was the individual you described?

A. Between 35 and 40 feet.

Q. Are you aware that the FBI, by actual measurements said this person was 60 feet from the corner of Taylor Hall?

A. No, sir.

Q. But would you say that he could have been as much as 60 feet away?

A. He could have been.

Q. Was he the closest person to you?

A. Closest person I observed at that instant.

Q. Had you ever seen that person with a gun in his hand?

A. No, sir.

Q. A knife?

A. No, sir.

Q. But he constituted a source of danger to your life?

A. Because of the way he was coming up, yes sir.

Q. Did you see what happened to that person right after you fired at him?

A. He fell, sir.

Q. Were there rocks coming in?

A. At that time we were being barraged by rocks. ?

9/13/78 author's gift 2 Vols.

Staff Sergeant Barry Morris of G Troop fired his weapon twice on May 4, 1970. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. Did you see any students closer {than the metal sculpture}?

A. Yes.

Q. Where . . . ?

A. There were students . . . in front of the sidewalk.

Q. How many?

A. 10, 15.

Q. Were they all together, clustered, or were they separated?

A. They seemed to be all together.

Q. How close were they?

A. I would estimate 30 feet.

Q. Did you see any guns in their hands?

A. I didn't see any guns.

Q. Any rocks in their hands?

A. I didn't notice . . .

Q. How many times did you shoot?

A. Two times.

Q. With your .45 pistol?

A. Yes, sir.

Q. You regarded those students as dangerous to your life?

A. Yes.

Q. You felt your life was in danger?

A. Yes, sir . . . we were surrounded on three sides. They were coming from everywhere . . . they were set on overtaking us . . . the noise level increased. I was scared to death. They were throwing stones and bottles . . . I could hear them hitting the cement top of the Pagoda.

Q. And did this continue up until the time of the shooting?

A. Yes, it did.

Sergeant Richard Love of Company C fired his rifle once into the air. He testified at Krause, et al. v. Rhodes, et al. as follows:

Q. [What were the students doing} at the time of the shooting?

A. The students were running at us. Shortly after the shooting started, some dropped to the ground, some ran to the side and some kept running at us.

Q. You mean after the shooting started, someone was running at you?

A. That's correct, sir.

Q. Did you feel a necessity, to save your life, to aim and shoot at any person at that moment?

A. I don't feel that I could shoot someone to protect my life, sir . . . I felt my life was in danger.

Q. From what?

A. From the onrushing students and rock throwing and so forth.

Q. How close were the onrushing students.

A. They were very close, sir.

Q. 30 yards?

A. Closer than that.

Q. 25 yards?

A. It was more like feet, sir.

Q. Doing what?

A. They were running, yelling, throwing rocks . . . I could see the rocks falling on the sides of me . . . the crowd seemed to be getting very close . . . the noise got extremely, extremely loud. ♪

Sp4 James McGee fired his rifle twice on May 4, 1970. At Krause, et al. v. Rhodes, et al. he testified as follows:

Q. At the time of the shooting, how near was the closest student?

A. A maximum of 60 feet.

Q. Did you see any weapon in his hand?

A. No, sir.

Q. Did you see any rock in his hand?

A. Not that I saw.

Q. Were you in fear of your life?

A. Yes, sir.

Q. What was the fear that you had . . . ?

A. The fear of being over-run and a bayonet used on me . . . I really became concerned that we weren't going to get out of there . . . the students or the protestors, whatever, were still coming in . . . 10

PFC Lonnie Hinton, of Company A, fired one round from his M-1 into the air. At Krause, et al. v. Rhodes, et al. he testified as follows:

Q. What did the crowd do as the troops moved up the hill {towards the Pagoda}?

- A. Students were still yelling vulgar language at us, and different gestures, and throwing rocks.

As we approached [the Pagoda], it seemed like the students were more or less gaining on us faster than we were moving.

- Q. The people, the crowd nearest you, what were they doing?

- A. They seemed to be coming at us at a fast walk or trot, more or less closing in on us, and I felt that my life was in danger, that I would end up with bodily harm if something hadn't been done.

- Q. Describe to the jury the noise of the crowd at that time?

- A. It was very intense.

- Q. Is it a fact that the closest students to you at the time of the firing were about 150 feet away from you?

- A. It was more like around a hundred feet.

- Q. Didn't you testify earlier . . . that it was a hundred to 150 feet away?

Page 44 of his deposition, gentlemen.

"Question: Did you ever get closer than 150 feet? Answer: From where I was, from where I was, from my position, no".

Now, those students were not running or charging at the moment, were they?

- A. They were moving faster than we were . . . it was more or less a fast walk or a trot. 11

Second Lieutenant Alexander Stevenson, of G Troop, did not discharge his weapon on May 4, 1970. He testified at Krause, et al. v. Rhodes, et al. as follows:

- Q. Would it be correct to say, sir, that the Guard was not surrounded when you got to the top of the hill?

- A. I believe that would be correct.
- Q. Estimate the distance between the National Guard unit, and the nearest group of students at the time of the shootings.
- A. I would guess about 40 or 45 feet . . . there was a closeness of National Guard and rioters {near the corner of Taylor Hall}.
- Q. Describe what happened.
- A. . . . the students were coming up on our rear. They were coming at a rate of speed that it became a concern . . . the students' rate of march increased. At any rate, it was faster than that of the National Guard.
- Q. At that time, would you be able to describe the noise level to the jury?
- A. There was a high noise level, with yelling and jeering and that type of thing.
- Q. Do you recall anything with respect to objects being thrown or hurled?
- A. Yes, there were stones being thrown.
- Q. Were you in fear of your life or great bodily harm?
- A. Yes, I was.
- Q. On the hill, sir, within the last minute or two or three before the shooting, you didn't see anybody struck by a rock?
- Q. No, I did not at that time.¹²

PFC Robert Hatfield, of Company A, did not fire his rifle at Kent State University. At Kruse, et al. v. Rhodes, et al., he testified as follows:

- Q. Isn't it a fact that the nearest students were approximately 20 to 30 yards from you?

A. Yes, sir.

Q. At any time during May 4, 1970, up on that hill, you didn't consider your life in danger, did you?

A. No, sir.

Q. Were you surprised that shots were being fired?

A. Yes, sir.¹³

Sp4 Robert James, of Company A, fired one rifle round into the air. at Krause, et al. v. Rhodes, et al., he testified as follows:

Q. Describe the crowd.

A. Well, there was a lot of students yelling and throwing rocks . . . we were just in a kind of a corner, a lot of rock throwing, a lot of noise, yelling and screaming . . . we were being worked into a corner by these people yelling to kill us . . . they were closing in on us.

Q. Were you in fear for your life?

A. Yes, I was, very much, sir . . . I was terrified up there for my life. ¹⁴

PFC Richard Snyder, of Company A, did not discharge his weapon on May 4, 1970. He testified at Krause, et al. v. Rhodes, et al. as follows:

Q. Did you believe that your own life was in immediate danger?

A. No, I didn't.

Q. At the time the firing occurred, were any students threatening you?

A. Yes.

Q. What were they doing? . . .

A. Throwing stones, yelling boisterously and on both sides of me.

Q. Mr. Snyder . . . you were interrogated by a member of the Ohio Highway Patrol . . . Page 3 of the Ohio Highway Patrol Investigation report. "Question: Did any student threaten you. Answer: No."

Did it appear to you at the time that students were about to over-run the National Guard?

A. It had run through my mind . . . it was a possibility.

Q. . . . immediately preceding the shooting, did you feel that your life was in danger?

A. No, I didn't.¹⁵

SP4 Russell Repp, of Company A, fired one round into the ground.

At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. What was the crowd doing?

A. . . . the students were gaining and coming up behind the Guardsmen . . . {Just before the shooting} I was hit by a rock in the leg and one in the shoulder.

Q. How far in front of you did {your rifle} round land?

A. 10 to 15 yards.

Q. How many civilians or individuals were in that area where your round hit the ground?

A. There were no students in that area.¹⁶

SP4 Ralph Zoller, of G Troop, fired two rounds on May 4, 1970.

At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. Explain what the crowd did.

A. Well, they were hollering and screaming, throwing things and chanting and so

forth . . . it was loud . . . they were moving toward us . . . I was really scared. I thought they were going to over-run us and take us.

Q. What did you do, sir?

A. I fired one shot in the air.

Q. And did you do anything else?

A. Yes, sir. I fired another shot at the leg of a student which had thrown a rock.

Q. Were you in fear for your life?

A. Yes, sir.

Q. Fear for your life from what?

A. Sir, anytime you encounter a mob out of control like that, any person in that crowd could be a danger to your own life.

Q. At {the moment of the shooting} did you see any person with a rock in his hand?

A. Yes, sir.

Q. How far away do you claim you saw the person with a rock?

A. 20 to 30 feet.

Q. You testified before the Federal Grand Jury. "Question: Tell us, Mr. Zoller, when you turned and saw this person coming at you and you fired once at high port and then you aimed at this person's legs, how close was this person to you? Answer: 20 to 25 yards."

Were you in fear for your life?

A. I fired at the person who I thought was the greatest threat to my own life?

Q. From a rock?

A. Yes, sir.

Q. Striking you where?

A. Sir, a rock could kill you just as well as a bullet if it hits in a temple.

Q. You thought the person at that distance was constituting, at that very instant, a threat to your life . . . ?

A. Yes, sir.¹⁷

PFC Rodney Biddle, of Company A, fired one "warning shot." At Krause, et al. v. Rhodes, et al. he testified as follows:

Q. Where was your rifle pointed?

A. The gun was pointed in the direction of an individual {who was} coming toward my position.

Q. Was he running?

A. Yes, sir.

Q. How far away was this person to you?

A. Probably 20 to 25 yards.

Q. Did you feel that this individual posed a threat to your life?

A. Possibly.

Q. Why {did you aim your weapon} at this individual?

A. As a bluff.

Q. Is it a fact that he was closer to you than the rest of the crowd?

A. Well, that's specifically why I picked him out in general, yes . . . {though} the crowd was actually chasing us . . . I thought we were about to be overrun.

Q. In other words, this person 20 to 25 yards away was the closest person to you of anyone that you could observe of the crowd, is that right?

A. Yes.

Q. Did you feel that it would have been appropriate to shoot at someone at the time you shot?

A. No.

Q. Were you hit by any rocks that day?

A. No.

Q. Is it a fact, sir, that no students threatened or abused you prior to the shotting?

A. Can you clarify "abused"?

Q. Other than verbally.

A. I would say no.¹⁸

SP4 William Perkins, of G Troop, fired eight rifle rounds into the air. At Krause, et al. v. Rhodes, et al. he testified as follows:

Q. Did you see any students closer to you than 60 feet?

A. Yes, sir.

Q. How close?

A. I would say 30 feet.

Q. How many students did you see 30 feet away from you?

A. I would say a hundred, sir.

Q. Were they charging the troops?

A. Yes, sir.

Q. From where were they coming?

A. From this area {indicating the sidewalk}.

Q. Did you see anybody closer than Joe Lewis?

A. Yes, sir, I did.

Q. I am talking about the space between the sidewalk here and the line of shooting . . . In this space, how many persons do you say that there were at the moment of the shooting?

A. I would say a hundred, sir.

Q. And what were they doing?

A. Rushing us.

Q. You saw a rush, where?

A. Toward our position.

Q. You felt that you were surrounded up there on the hill?

A. Yes, sir, I did.

Q. When you say surrounded, you mean that you felt there were dangers and students rushing you from all around?

A. That's the way I felt personally, yes sir. 19

SP4 Lloyd Thomas, of G Troop, fired his rifle once into the air on May 4, 1970. At Krause, et al. v. Rhodes, et al., Thomas testified as follows:

Q. Did you feel that your life was in mortal danger?

A. Yes.

Q. Was your life in danger?

A. Possibly.

Q. {Describe} the crowd.

A. . . . it seems like there was about a thousand, 1,500 students around the sidewalk area alone, plus out in the parking lot

there were 300, 400, 500 really aggressive people.

Q. What was the nature of the crowd . . . ?

A. Well, when we were retreating, even more rocks were being thrown . . . more of these 50 to 100 really aggressive leaders seemed to gain strength and it seemed like more people were coming in, throwing rocks as we were leaving the field . . . There were definitely more rocks being thrown as we were leaving the field. 20

SP4 Leon Smith, of Company A, fired one round into the air.

At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. Now, this particular individual, whom you testified was a hundred feet from you, did he, at that time, as far as you were concerned, pose any danger to your life?

A. Yes.

Q. Is that because he was about to throw an object about the size of a half-brick at you?

A. Yes.

Q. Other than . . . this individual with this object in his hand, what do you claim you were subjected to, if anything?

A. At that time, the only thing I was subjected to was a lot of yelling and screaming and a person coming at me with a rock.

Q. What was the crowd doing?

A. They were again chanting different things, calling us "Draft Dodgers, Weekend Warriors, Pigs." I heard the words "Kill, kill, kill" used a couple of times.

Q. What is the fact as to rocks?

A. We were getting rocks from my position. I received rocks all the way up to the hill just prior to the shooting. 21

Sergeant Okay Flesher, of G Troop, fired three rounds from his .45 pistol into the air. At Krause, et al. v. Rhodes, et al. he testified as follows:

Q. . . . you were never struck by any object of any kind from the time you left the practice field until the time you heard some shots?

A. That's correct.

Q. You wheeled around at that time to see if anyone was coming up the hill?

A. I turned to my left and faced a student coming up the hill.

Q. . . . you didn't see anybody other than that student?

A. . . . there was only one student within approximately 25 feet of me.

Q. Isn't it a fact, sir, that at that time you did not feel that your life needed protection to the degree of firing at that time?

A. That is correct.

Q. Were there any civilians, any students in the area where you saw the firing occurring?

A. There was a main area of students of approximately platoon size {40 people} . . . in this vicinity here {indicating}.

Q. For the record, I believe that was the veranda of Taylor Hall.

What were they doing?

A. They were actually trying to catch up with the Guardsmen at that time . . . They were chanting . . . "Go ahead and shoot, Throw the pigs off campus."

Q. Were there any other students there?

A. There were more students coming out of the parking lot area . . . approximately 600 students or so. 22

PFC Paul Noujoks, of Company A, did not discharge his weapon on May 4, 1970. He testified at Krause, et al. v. Rhodes, et al. as follows:

Q. Is it a fact that you did or did not fire your rifle that day?

A. I did not fire.

Q. It is a fact that the closest student you saw to you at that time was about 30 yards away?

A. I would say it was closer to 20 yards.

Q. You say there were oncoming rioters?

A. Yes, sir.

Q. Any rocks in their hands?

A. Yes, sir . . . There were rocks thrown continuously . . . the rioters were continuously throwing rocks at us and following us up the hill . . . they were coming closer and closer . . . 23

Sergeant Mathiew McManus, of Company A, fired one shotgun round into the air. He testified at Kruase, et al. v. Rhodes, et al. as follows:

Q. Were you, sir, in fear of your life?

A. Yes, sir, I was.

Q. How many times did you fire your shotgun?

A. Once, in the air.

Q. Please tell me, as best you can, why you said for people to fire into the air?

- A. The reason is really twofold. Number one, I felt that the situation, although at crisis point, because of the rush of students, did not require individuals to shoot point blank.

And, secondly, I was concerned not only for the lives of the people immediately behind me or in the area of myself; I was concerned also for my own life, as I was standing in front of the troops as they turned. 24

First Sergeant Myron Pryor, of G Troop, did not discharge his weapon on May 4, 1970. He testified at Krause, et al. v. Rhodes, et al., as follows:

- Q. {Before the troops turned to fire} did you see any danger shaping up ahead of you?
- A. Not ahead of us, no sir.
- Q. Did you see any danger on the left of you for any reason whatsoever?
- A. No, sir, not to the left.
- Q. How about to the right of you, from the point of the veranda or terrace of Taylor Hall, did you see any danger over there?
- A. No.
- Q. What did you see, some students on the veranda?
- A. . . . yes.
- Q. You didn't see them doing anything but standing along there? Is that a fair statement?
- A. Yes, sir.
- Q. Looking to the right on the veranda, you saw nothing of a hazardous nature to your life at that time, is that a fair statement?
- A. Yes, sir.

Q. Were there stones thrown when the Guardsmen turned?

A. Yes, sir, there were stones being thrown.

Q. You were not in fear for your life at that instant, were you, sir?

A. No, sir.

Q. Is it a fact that you didn't see anyone hit {by rocks} at the moment the shooting began?

A. No, sir, I did not.

Q. Is it a fact that you did not remember any stones being thrown within a number of seconds at least, before you first heard any shots? Is that a fair statement?

A. Yes, sir.

Q. Are you telling the Court and jury that you did not fire your pistol from the hill that day?

A. Yes, sir . . . I did not fire my pistol.

Q. Describe {the crowd}.

A. Well, sir, we were being rushed.

Q. By whom?

A. By the students or people who were there.

Q. How close to you?

A. I estimated approximately 30 feet away.

Q. Rushed from what direction?

A. In this direction here {indicating}.

Q. May the record show that he is pointing in a direction downward from the shelter area . . . between Taylor Hall and the shelter area . . . 25

Lieutenant Ralph Tucker, an officer from Company H, temporarily attached to G Troop on May 4, 1970, did not fire his rifle. At Krause, et al. v. Rhodes, et al. he testified as follows:

Q. What was the crowd doing . . . ?

A. They were yelling and throwing rocks, moving toward the Guard line on the right, especially . . . the crowd was moving into the triangular area between Taylor Hall. There was a sidewalk.

Q. What was the crowd doing just before the firing insofar as approaching the Guard or not approaching the Guard . . . ?

A. They were closing with the Guard, sir.

Q. Were they making any noise?

A. Yes, sir, very loud. The rocks were still coming in and the crowd was yelling, taunting and moving toward the Guard. 26

First Lieutenant Dwight Cline, of Company A, did not discharge his weapon on May 4, 1970. He testified at Krause, et al. v. Rhodes, et al. as follows:

Q. I want you to tell, in your own words, to the jury what you saw . . .

A. OK, sir. At the time, I see, from the Taylor Hall complex itself or building, stones coming off of the building and there were people throwing stones there . . .

Just as the firing commenced, I seen what appeared to be a parking, something like a parking meter or a big steel post come off the top of that hill and it just missed; it appeared to be right in behind where those Guardsmen would have been in that area to the left {Note: see the testimony of William Gerstenlager}.

- Q. What did you observe with respect to the numbers of students or crowd near your troops on the left flank and the numbers that were in the area of the right flank?
- A. Sir, there weren't that many people on our left flank {in the direction of the Commons}. They were more heavily concentrated in front {between the Pagoda and the Taylor Hall parking lot}.
- Q. How much distance was there between the people you were facing and the troops?
- A. 8 to 10 meters . . . 24, 25 feet.²⁷

Lieutenant Howard Fallon, of G Troop, did not discharge his weapon on May 4, 1970. At Krause, et al. v. Rhodes, et al. he testified as follows:

- Q. Immediately before the shooting broke out, did you fear for your life? Did you think that your life was in danger?
- A. That sir, is a question I can't answer yes or no.
- Q. Well, did you ever answer that question "No, sir"?
- A. Yes, sir, but you are taking it out of context.
- Q. What would lead you to say that immediately before the shooting broke out you did not fear for your own life . . . ?
- A. My experience level and background is much different than a lot of people. I am a police officer. If I feared for my life every day, I don't think I would do what I do . . .
- Q. Describe, please, for the jury what the actions of the crowd were as you moved toward the top of the hill there at Taylor Hall.

A. . . . the mob began to pursue The distance between us and them decreased and it seemed like they picked up their own momentum The volume of missiles increased even more than it had been and I saw several people struck. I was struck.

And the chant became "Kill the pigs, get the pigs off. Pigs off campus. Kill, kill, kill". That type of thing. Almost animalistic. 28

Captain Raymond Srp, Troop Commander of G Troop did not discharge his weapon on May 4, 1970. Srp was quoted in the Justice Department's summary of the FBI report as saying that the situation on Blanket Hill was "not a shooting situation" and that "the lives of the members of the Guard were not in danger."²⁹ Michener quotes Srp as stating, "I was right in the middle of it and felt no danger,"³⁰ but the source of this statement is not cited in the book. Judge Thomas, in Krause, et al. v. Rhodes, et al., refused to allow the Captain to testify about the veracity of these comments themselves, but the plaintiffs did succeed in having him declared an expert witness on riots and riot control. His testimony at that trial follows:

Q. Was that a shooting situation?

MR. FULTON: Objection

MR. BROWN : Objection

THE COURT : Sustained

Q. Do you have an opinion whether the firing was justified?

A. I don't have an opinion.

Q. As an expert then, Mr. Srp, do you have an opinion as to whether the lives of your men were in danger at the Pagoda on May 4th?

- A. Yes.
- Q. I would like your opinion, sir.
- A. The situation was escalating to a point where the lives of my men out there and other men were in danger . . .
- Q. Mr. Srp, at the moment that shooting actually occurred, had the situation then yet escalated to the point where shooting was justified?
- A. Yes, in the area of the shooting.
- Q. Did you know at the time that the firing occurred why they were firing?
- A. To protect their lives.
- Q. Did you know that at that time?
- A. No, I probably didn't.
- Q. At that time, did you wonder why they were firing?
- A. Yes.
- Q. Was your life in danger?
- A. No . . . From my position, I wasn't standing where the firing broke out.
- Q. Sir, by any chance were you struck by any rocks on the hill?
- A. No, I wasn't.
- Q. When had you last seen any rocks thrown . . . ?
- A. When I was coming up the hill.³¹

Major Harry Jones, as Commander of the 145th Cavalry (which includes both Troop and Company A), was the third highest ranking Guardsman present on the Kent campus on May 4, 1970. He and General Canterbury were the two men most responsible for stopping

the shooting. Jones is visible in photographs "tapping" {to use his phrase} his men with his wooden baton to get them to cease fire. Major Jones did not fire his pistol on May 4, 1970. He testified before the Federal Grand Jury in 1974 as follows:

Q. Was it basically your conclusion as a professional officer that the firing was not justified under those circumstances?

A. That is my personal opinion.

Q. As a military officer?

A. As a military officer . . . I will have to go on record as saying that {it was not justified}.

Q. Did you have any occasion to fire your own weapon?

A. I did not.³²

At Krause, et al. v. Rhodes, et al. Major Jones testified as follows:

Q. Were you attacked by any student behind you within a minute or so of the firing?

A. No.

Q. Were you rushed by any students from the front?

A. I could not see to the front. I was on the other side of the hill, the reverse slope.

Q. Were you rushed by any students on your right?

A. Yes.

Q. Did you observe a situation where any Guardsman's life was in danger?

A. From my point of observation, yes.

Q. What did the students do or say as you moved up toward the Pagoda, up the hill?

A. Something like "We've got them. Get them." I heard one distinct, very distinct comment from some student, said "Get the weapon. We have got them. Take them. Kill the green pigs, get them off of our campus."

That was continuous the whole time we were going up the hill. There was a large number of missiles . . . Some were striking troops, some were not. But the intensity continued to increase and increase as we started up that hill.

Q. Were you struck with anything?

A. Yes, I was {struck four times, once by a brick and once by a two-by-four}.

Q. What was the crowd doing as you reached the top of the hill . . . ?

A. I could feel that they were closing in on the troops . . . they were fairly active and aggressive . . . the intensity of noise was very, very high.

Q. Were you in fear for your life?

A. Yes, I was.

Q. And why was that?

A. With the intensity and aggressiveness of the students, I had a fear that they may overtake the Guard and some Guardsman might not protect himself enough and they might get a weapon away from him . . .

Q. What did you do when you heard the volley of shots?

A. I started immediately to take action to stop it . . . {the shooting} kind of stunned me.

Q. You tried to stop the shooting, did you not?

A. I stopped the shooting. I didn't "try."
I stopped the shooting.

Q. How did you do that?

A. I pushed the weapons. I grabbed people.
I tapped the person on the helmet with a
night stick. 33

Paul Locker was a reporter for the Ashland City Press on May 4, 1970, and he was on the Kent campus that day covering the disturbances there for his newspaper. When the shooting itself occurred, Locher was located on the sidewalk in front of Taylor Hall, near the spot where Jeff Miller was shot {approximately 265 feet from the Pagoda area}. At Krause, et al. v. Rhodes, et al., Locker testified as follows:

Q. . . . Tell the ladies and gentlemen of the jury what you observed as the Guard left the practice field and moved back toward the Pagoda area . . .

A. Okay. As they moved up toward the Pagoda, the crowd closed in on them, closer and closer. They were throwing lots of rocks at this time. The air was full of them, the the crowd grew increasingly hostile and ugly, and the noise level was very intense immediately before the shooting. It reached kind of a deafening roar.

Q. What was the fact insofar as the distance between the Guard and the crowd is concerned . . . ?

A. The distance, it was steadily decreasing as the students moved closer and closer.

Q. Describe for the jury the pace of the crowd as the Guard moved up the hill.

A. Well, it started out as a walk, and by the time they fired, I was moving at a trot myself, just to keep up with the rest of

of the rest, and they would have been on the Guardsmen within a couple of seconds.

Q. How many students were there in this crowd that you have described just before the shooting?

A. There were close to 500, to my best estimate.

Q. As the Guard moved up the hill and shortly before the firing, what is the fact as to whether or not you observed any Guardsmen struck by rocks?

A. I saw several Guardsmen struck with rocks.

Q. The fact is, you said many of those rocks fell short of their target, is that so?

A. Right.

Q. You, yourself, were trotting toward the Guard. Were you charging the Guard?

A. I suppose it could be interpreted that way-- I didn't feel, you know, charging in connection with hostility personally. I didn't feel any hostility toward the Guard. I was only running in that direction because I wanted to see what, you know, transpired.

Q. The Guard, the Guardsmen walking toward the Pagoda area were not running, were they?

A. No.³⁴

Al Thompson was covering the Kent disturbances for the Cleveland Press. Michener calls him a "trained observer,"³⁵ and then quotes {again, without precise citation} from an eyewitness account published in the May 5 issue of the Cleveland Press: "Now the Guardsmen begin to retreat . . . The students moved after them. Suddenly a group of students raced forward to within close range of the Guard, some throwing rocks. In that instant,

there was a shot."³⁶ Michener neglects to inform his readers that that account first appeared in the May 4 issue of the Cleveland Press, under the banner headline THREE ARE KILLED AT KENT STATE - TWO GUARDSMEN, YOUTH ARE VICTIMS.³⁷

Mark Miller, a Kent State student in 1970, testified before the KSU Commission that rocks were being thrown at the Guardsmen at the time of the shootings: "The students were throwing stones and I could see the Guardsmen ducking. I would say they were ducking quite frequently . . . I would say the closest student was probably around 50 feet--between 40 and 50 feet. There weren't too many of these; there were a lot of students back further . . . I'll say between 50 and 100 students behind them, maybe within 100 to 150 feet."³⁹

Richard Massman, Associate Professor of Music at Kent State in 1970, testified before the KSU Commission that as the Guard neared the Pagoda area, "the intensity of the stoning increased."³⁹ Raymond Braddus, another member of the Kent State faculty, testified that the students nearest to the Guard were ten yards from the Pagoda. These were "the radicals and active demonstrators {about 50 people}. Behind these were many photographers, students with cameras and interested but passive demonstrators. Beyond these {50 to 100 yards away} were spectators."⁴⁰

Marylin Jenkins, Associate Professor of Home Economics, testified that "as the students were advancing, they were pelting the troops fairly heavily with rocks."⁴¹ Student Bruce Lang also testified that the "Guardsmen were being pelted with rocks . . .

The largest rock that I saw being thrown was the size of possibly a woman's fist."⁴² Harriet Begala spoke of a "rock barrage,"⁴³ while Student Sam Bredler stated that he saw a "piece of small, light pipe" thrown at the Guard not long before the shooting began.⁴⁴ This was corroborated by Mrs. Dan Burke, who told of a "twisted piece of metal in the shape of a boomerang" hurled at the troops.⁴⁵

Jonathan Mayer, a KSU freshman, testified before the Commission that "the crowd started to funnel toward the Guard . . . and they were shouting 'kill' and 'kill the pigs!' They were throwing rocks, sticks, some of them were waving sticks . . . these harrassers were at a dead run, shouting, throwing things, yelling "kill" . . . these people were 10 yards from the Guard line."⁴⁶ Judy Haleck stated that "the kids were almost on top of the Guard."⁴⁷

Paul Tople was standing on the Taylor Hall veranda when the shooting began. Tople, whose perceptions of that event were quoted at length by Michener,⁴⁸ testified at U. S. v. Shafer, et al. as follows:

- Q. To your recollection, where were the students closest to the Guard at the time of the shooting?
- A. The closest students that I saw were between the metal sculpture and the southernmost walkway.
- Q. Now this photograph {taken by you from the veranda just before the firing commenced} shows how many civilians that were not on the veranda?
- A. I can see none in this photograph.

Q. In this {second photograph} how many civilians can you see who were not on the porch?

A. Two or three.

Q. Where are they located?

A. The closest one I can see is on the walkway. The next one is back from the walkway, near the metal railing around Taylor Hall, back a couple of feet from the walkway.

Q. Did you say this in a statement made to the FBI on May 8, 1970: "The guard was retreating {up the hill} with the crowd close at hand. They were 20 or 30 feet apart and the crowd was throwing rocks, bottles and sticks. The crowd continued to close in and the Guard took position on the top of the hill."

Did you make that statement?

A. Yes, I did.

Q. Did you see any Guardsmen hit {by rocks} at this time?

A. No, I did not.⁴⁹

Joseph Lewis was one of thirteen Kent State University students who were shot on May 4, 1970, four fatally. Lewis was standing near the metal sculpture, approximately 20 yards from the Guardsmen when he was hit. Lewis was shot twice: one bullet entered his right lower abdomen and exited from his left buttock. A second bullet caused a through-and-through wound in his lower left leg.⁵⁰ At Krause, et al. v. Rhodes, et al., Lewis testified as follows:

Q. When the Guard passed the area of the {Pagoda}, what, if anything, did you see?

A. I saw, there were no stones being thrown and there was no rush of students, there were no students between me and the Guard.

Q. What, if anything, Joe, were you doing . . . ?

A. I was standing on the sidewalk . . . expressing my frustration in a gesture like this {indicates an obscene gesture}. 51

John Cleary was standing behind Lewis, approximately 37 yards from the troops. He was shot while standing laterally to the Guard; the bullet entered his left upper chest, and the main fragments exited from the right upper chest.⁵² At Krause, et al.v.

Rhodes, et al. Cleary testified as follows:

Q. What, if anything, did you do?

A. I stood there and watched {the Guard} reach the crest of the hill.

Q. Now, taking this area . . . and I am making a kind of a box {on the map} which includes the sidewalk area, the Pagoda area, the corner of Taylor Hall and the metal sculpture area . . . How many people do you recall during the 30 seconds {before the shooting began} in this area?

A. I believe I saw three or four people standing on the sidewalk . . . And I believe I saw another group of maybe three standing here {indicating}.

Q. Were they doing anything other than standing, you observed?

A. No.

Q. Now, other than these people you have identified in that area, were there any other students that you saw during this 30-second period?

A. No.

Q. Where, if anywhere, was the closest student behind the Guard during this 30-second interval?

A. The closest students I saw were standing on the sidewalk, which would be about 60 feet {from the Guard}.

Q. That would be how many?

A. Three.

Q. You did not see any students in this area, indicating in this tree area?

A. Yes.

Q. You saw none in there?

A. None.

Q. Did you observe a rush of students toward the Guardsmen?

A. No, I did not.⁵³

Thomas Grace was standing near the lower sidewalk of Taylor Hall, 66 yards from the Guard, when he was shot in the back of his left ankle. Fragments exited from the top of his foot.⁵⁴ At Krause, et al.v.Rhodes, et al. Grace testified as follows:

Q. Did you see anything resembling a barrage of rocks, sticks, bottles, stones, anything like that?

A. No. I never remember seeing a bottle thrown.

Q. Or anything?

A. No.

Q. In the nature of that?

A. No . . . there may have been some rocks or stones thrown but I still would not describe it as a barrage, but I can't recall it at this time.

Q. Just before the shooting took place . . . did you see any students between {yourself and the National Guard}? I am excluding behind the railing on Taylor Hall . . .

- A. I would say between 25 and 35 students.
- Q. And where were the closest students that you observed at that time to the Guard?
- A. In the vicinity of the metal sculpture.
- Q. How many were in that vicinity?
- A. 10 or 15, perhaps.
- Q. What were those students doing?
- A. I remember some were standing still, some were walking, and I believe two or three were running.
- Q. Where were the two or three running?
- A. They were running, it seemed like, toward the metal sculpture.
- Q. Now, how far would you estimate the metal sculpture to be to the closest student that you observed at that time from where the Guard was?
- A. 90 feet, a hundred feet.
- Q. Tom, just prior to the shooting . . . did you see any students at all between the metal sculpture and the walkway and the Pagoda {and the corner of Taylor Hall}?
- A. I don't recall seeing any students in that area. 55

Alan Canfora was standing near Thomas Grace, his roommate, 75 yards from the Guard. Canfora testified at Krause, et al. v. Rhodes, et al. as follows:

- Q. And what was the location of the closest students that you observed as the Guard moved from the practice field area up toward the shelter?
- A. Students were generally keeping their distance from the Guardsmen and I would say

the closest student that I observed was probably 75 to a hundred feet.

Q. Did you see any objects being directed towards the Guard during this . . . four-minute or so period {prior to the shooting}?

A. No.

Q. None whatsoever?

A. None at all.

Q. Were you watching the Guard during that period of time?

A. Yes, I was.

Q. Now, at about that time when you saw {the troops} take those few quick steps before they fired, how many students were in an area that was closest to the Guard that you have already testified to?

A. I would say the closest students to the Guard that I observed at that point were 60 to 75 feet away. There were only maybe two or three and they were located near Taylor Hall . . . one or two others were about 200 feet away.

Q. And were there students on the veranda, the railed-in veranda of Taylor Hall?

A. Yes, there were students observing on the veranda.

Q. Do you recall how many there were?

A. Probably 50, 25 to 50.

Q. Where were you wounded?

A. In the right wrist, a through-and-through wound. 56

Dean Kahler was prone on the grassy area between the parking lot and the access road, 100 yards from the Guardsmen, when he was

shot in the left posterior side. The bullet traveled from back to front and from above to below, fracturing three vertebrae.⁵⁷ He is presently paralyzed from the waist down and will probably remain a paraplegic. At Krause, et al. v. Rhodes, et al. and U. S. v. Shafer, et al. {as cited}, Kahler testified as follows:

Q. Did you see any stone-throwing at that time at all?

A. . . . No. I did not see any stone-throwing at that time.

Q. Can you tell us how close was the closest student that you saw closest to the Guardsmen?

A. I would say approximately 70 to 80 feet.

Q. Can you point to the general area where you saw a student, the closest one . . . ?

A. Right in this area here, right around there-- where the sidewalks sort of merge . . . southwest of the metal sculpture.

Q. Between you and where the National Guardsmen were . . . how many students or persons were there between where you were and between where the Guardsmen were when they started shooting?

A. About 15, 16, 17.

Q. . . . did you notice any students in motion at that time, just before you heard any shots?

A. I saw some students moving toward me.

Q. And before you heard any shots, did you see any student moving toward the Guard?

A. I would say three or four.

Q. . . . where . . . ?

A. Right in this area {indicating} here off the sidewalk . . . Some directly in front of me.

Q. And these three or four students that you saw at those positions that you just pointed to, will you describe how they were moving?

A. The one on the sidewalk was walking. This one was sort of jogging . . . this one was walking toward the trees.

Q. Tell us, how close was the closest of the moving students, of the three or four, how close they were to the Pagoda area?

A. About 150 feet, 125 feet.

Q. Aside from moving, what were these students doing, if anything?

A. Nothing.⁵⁸

Q. Did you notice a large rush of students towards {the Guards} position?

A. No, I didn't.⁵⁹

Douglas Wrentmore was standing in the parking lot, 110 yards from the Guardsmen, when he was shot in the left side of the right knee. The bullet, which caused a compound fracture of the tibia, exited on the right side of his knee.⁶⁰ At U. S. v. Shafer, et al. Wrentmore testified as follows:

Q. Could you tell if there was any group of students close to the Guard . . . ?

A. Well--there was some--there were a lot of people on the porch of Taylor Hall. Excluding them, there were some people around the sculpture and the walkway, there.

Q. How close were the closest students you saw to the Guard, in your estimation? Where would you place those students?

A. They were right here . . . near the first walkway that runs into Taylor Hall.

Q. How many students were {within 50 feet of the guard}?

A. Very few . . . less than five. Maybe one or two. The nearest one was 50 or 60 feet, but in that range.

Q. There wasn't a large crowd in front of Taylor Hall?

A. There was a large crowd on the porch . . .⁶¹

James Russell was wounded near Memorial Gymnasium, an area ninety degrees removed from the location of the other students who were shot; Russell was 130 yards from the Guard when he was hit. He received two wounds, both minor. A small puncture wound in the right thigh may have been caused by a bullet or birdshot. A second wound, this one in the right forehead, was probably caused by birdshot.⁶² Russell testified at Krause, et al. v. Rhodes, et al. as follows:

Q. Where were the closest student to the Guard at that point in time?

A. I did not see any student other than the ones on the portico of Taylor Hall. I did not see any students closer than the metal sculpture.

Q. . . . did you see any students throwing rocks or anything else?

A. The last rock that I saw thrown was before the National Guard arrived at the top of the hill by the Pagoda.

Q. Can you tell the court and jury, generally speaking, the mood of the crowd?

A. Well, there was no rush, there was no loud noises, other than--no noises louder than the sounds of earlier that day.

Q. As the Guard was moving up the hill towards

the {Pagoda}, did you observe any rush of students towards the Guard?

A. No, sir. There was no rush of students.

Q. Can you give the court and the jury an estimate of approximately the number of students that were in the immediate area {of the guard}?

A. In the area between the parking lot and the steel sculpture, there were a dozen to two dozen students.

Q. Did you hear anyone in the crowd yell "kill, kill, kill."

A. No, sir.⁶³

Robert Stamps was near the middle of the parking lot, 165 yards from the Guard, when he was shot in the right buttock; the bullet penetrated approximately four inches.⁶⁴ Stamps testified before the Scranton Commission as follows:

Q. Were you in a position to see or observe any movement of the crowd in the parking lot area?

A. Yes, I was.

Q. Did you see a massive forward surge of the crowd or a small forward surge of the crowd?

A. Absolutely not . . . None whatsoever. The great majority of the students were there to watch . . . they were indifferent . . . I myself was watching the girls more than I was watching the Guard.⁶⁵

Donald MacKenzie was located near the eastern limit of the parking lot, 250 yards from the Guard, when he was shot. The bullet entered the left rear of his neck, struck his jawbone and exited through his cheek.⁶⁶ At U. S. v. Shafer, et al., MacKenzie

testified as follows:

Q. Mr. MacKenzie, as you were standing in the parking lot and looking up toward the top of the hill, in the direction of the Guard, were you in a position to see the east side of Taylor Hall and the west end of the Prentice Hall parking lot?

A. Yes.

Q. Did you observe any rush of students up that hill in the direction of the Guard immediately prior to the shooting?

A. No, I didn't.

Q. Did you observe any rocks thrown at that point?

A. No. ⁶⁷

Tim Nighswander, a Kent State student photographer in 1970, was located between Taylor and Johnson Halls when the firing began. At U. S. v. Shafer, et al., he testified as follows:

Q. Would you describe what that photograph depicts?

A. It is looking up from where I was standing between Johnson and Taylor Hall. On the crest of the hill, there is a line of soldiers; between me and the Guard, there are a number of students standing on the ground.

Q. . . . when did you take that photograph?

A. I took that picture as soon as the Guard reached the top of the hill. While I was taking it, the sounds of shooting began.

Q. . . . Could you indicate where the closest student is, I mean the closest student to the National Guard?

A. There's one standing fairly close to Taylor Hall and somewhat beyond the sidewalk

between Johnson and Taylor Hall.

Q. Approximately how far would you say he was from the line of National Guardsmen?

A. Probably 100, 110 feet.

Q. At any time prior to taking this photograph, did you see a rush of people or students toward the National Guard position?

A. No, I did not.⁶⁸

Richard Harris, a student photographer, was standing between Taylor Hall and Prentice Hall when the firing commenced. At U. S. v. Shafer, et al., he testified as follows:

Q. What did you observe, if anything, of the students in front of Taylor Hall?

A. The students were standing there watching, thinking that the Guard was going over the hill; they were leaving, that was what people were saying at the time.

Q. I would ask you, sir, if there was a rush of students across Taylor Hall in the direction of the [Pagoda]?

A. No.

Q. Just prior to the shooting?

A. No.⁶⁹

John Filo, a photographer for the Daily Kent Stater on May 4, 1970, won a Pulitzer Prize for his pictorial portfolio of the events of that day. When the shooting began, he was located on the sidewalk in front of Taylor Hall, approximately two hundred feet from the National Guard. At Krause, et al. v. Rhodes, et al., Filo testified as follows:

Q. Until the Guard reached the {Pagoda area}, did you observe any objects being thrown at the Guard?

A. No, I did not.

Q. How many students did you see between yourself and the National Guard?

A. My field of vision, 20 or 30.

Q. Your field of vision covered approximately what area of the slope in front of Taylor Hall?

A. From the wooded area just to the left of the shelter.

Q. How close was the closest person to the Guard at this time?

A. The closest people would be people who were standing on the porch of Taylor Hall.

Q. Other than those on the porch behind the railing at Taylor Hall . . . what would you say was the closest person to the location of the Guard?

A. . . . by the walkway {referring to the walkway coming from the entrance of Taylor, northeast of the Pagoda}.

Q. How many students were you able to see that close to the Guard?

A. 3 or 4, or 5.

Q. {How many of these 20 or 30 mentioned previously} were as close to the Guard as the sidewalk extending from Taylor Hall?

A. 4 or 5.

Q. What were these students doing?

A. Just moving about as the Guard was moving, walking as the Guard was walking.

Q. Did you see those persons or any persons that were forward of you on the hill

throwing things at the Guards?

A. No, I did not.

Q. Any distinctive activity at all on their part other than just following the Guard?

A. No, no.

Q. Did [the students] do anything during the moment before [the Guard] fired?

A. Not that I noticed.

Q. Was there an increase in the noise level, shouting?

A. . . . Nothing that would be termed as an increase or a raise in the decibels, not anything that was outstanding.

Q. Did you observe any rush of a great number of students passing you as you stood some 190 to 200 feet from the Guard?

A. No, I did not.⁷⁰

John Darnell, another Stater photographer, won the Polk Award for his work on May 4th. Darnell followed the Guard as they marched towards the Pagoda, but when the shooting itself commenced he was located on the Taylor Hall veranda. At Krause, et al. v. Rhodes, et al., Darnell testified as follows:

Q. Did you continue to observe the Guard as they moved up the hill towards the Pagoda?

A. Yes.

Q. From the time the Guardsmen left the fence until they reached the Pagoda, did you see anything thrown at them?

A. No.

Q. Did you see a crowd surge toward them?

A. No.

Q. Between you and the Guardsmen, were there any students closer than yourself?

A. Back to the right {on the veranda}, but in front of me I had a clear shot. I don't think there was anyone in front of me.

Q. . . . what, if any, movements were there by anybody at that time, right up to the instant of the shooting?

A. {As the Guard left the practice field}, they were going up the hill and the students started lagging farther and farther behind, first like twenty feet and then thirty and then more. By the time {the Guard} got to the top of the hill, the majority of the students were down near the base of the hill, probably even further, and the lives of the Guardsmen were absolutely in no way endangered . . . the bulk of the students {who had been harassing the Guard on the practice field} were at the front of the hill. 71

Robert McNees, a third Stater photographer, also followed the Guard on their march back to the Pagoda. But, unlike Darnell, McNees stayed behind and to the left flank of the troops until the firing commenced; at that moment, McNees was approximately 350 feet from the Pagoda. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. What did you observe with respect to any activities, if there were any, of students . . . as the Guard neared the area of the Pagoda?

A. Well, I saw there were very few students in that area, and when the Guard had come off of the practice field, most of the students that would have been on that hillside moved to the north between Taylor Hall and I believe it's Prentice, Prentice Hall.

Q. Did you see any students on the slope of the hill . . . ?

A. No, I didn't.

Q. Are you able to say from your recollection how far from the National Guard line that this individual shown in the foreground of this {photograph} was located?

A. He was approximately 300 feet.

Q. Prior to the time that {you took this photograph}, did you see any students in your angle of view nearer to the Guard than that individual?

A. No.

Q. Did you at any time see any students nearer to the Guard line than that individual shown?

A. No, not that I can recall.

Q. Did you at any time see any students nearer to the Guard than the sidewalk {in front of Taylor Hall}?

A. No, I didn't.

Q. Mr. McNees, what if any kind of movement did you see on the part of any students within a couple of hundred feet, 250, 300 feet of the Guard, during the moments before the shooting broke out?

A. I didn't see any movement at all. There were perhaps a few people in that area where I was, but . . . there was no rush, they were in no hurry. They were following the Guard . . . I didn't see a large number of students.

Q. When the Guard reached the area of the Pagoda where the firing took place, were the Guardsmen surrounded?

A. No. ⁷²

Howard Ruffner was a photographer for the Chestnut Burr, the Kent State yearbook, on May 4, 1970. When the firing commenced, he was located on the sidewalk in front of Taylor Hall, approximately 90 feet from the Guard. Michener quotes Ruffner as saying that he "wound up less than forty yards from {the Guard} when they stopped. There was only one man in front of me and he was shot. I was aware of no barrage of rocks, no large crowd behind me, no one following them up the hill from the football field and certainly no one ahead of them on the way back to the ROTC."⁷³

Ruffner testified before the Scranton Commission, however, that two students were between him and the Guard: "One was near the sidewalk or just in front of me and one was in front of the sidewalk. The one in front jumped over the railing as soon as the firing started and the other one was hit."⁷⁴ At Krause, et al. v. Rhodes, et al. and U. S. v. Shafer, et al. {as cited}, Ruffner testified as follows:

- Q. What, if anything, were the students doing?
- A. My observations places a few students to my left and down the hill. I don't recall the size, but a few students and some movements of the students--no, nothing that would catch my attention.
- Q. What was the closest student to the Guard?
- A. I would be the closest student, as I paralleled their walk-in.
- Q. Did you notice any students on the grassy area behind the Guard . . . ?
- A. . . . I didn't notice anything that would, you know, cause me to turn around and look or get my attention.

Q. What, if anything, did you observe the students doing?

A. . . . There was no missiles coming over my head, there is nothing falling in front of me. Some vocal noises coming from the group, but that's about all, mostly watching.

Q. At this time, immediately prior to the shooting, did you observe any rush or surge of students towards the Guard lines?

A. No, I didn't.⁷⁵

Q. Were you interviewed by a Kent State student named Jeff Zink on May 8, 1970?

A. Yes, I was.

Q. He made a tape recording of that interview at that time, didn't he?

A. I believe so.

Q. Did you make this statement to Mr. Zink: "Ruffner: The Guard got on top of the Hill. Zink: How close was the students to the Guard and how many were close to the Guard? Ruffner: At this point, I'd say the students were about 50 feet, 40 or 50 feet. They had crossed the sidewalk on the way to the {Pagoda}. There weren't too many . . . I couldn't say how many. Zink: where was the mass of students located? Ruffner: Well, there was a large mass of students behind the Guard, maybe 50 to 100 students behind them, maybe within 100 to 150 feet."

Do you remember Mr. Zink asking you and your giving him that answer?

A. No, I do not.⁷⁶

Alfred Moore was a Kent State University staff photographer on May 4, 1970. When the firing commenced, Moore was on the sidewalk in front of Taylor Hall, behind Ruffner, 110 feet from the Guard. At U. S. v. Shafer, et al., Moore testified as follows:

Q. How many persons did you see between yourself and the Guard at the time of the shooting?

A. I saw one.

Q. Where was this person located?

A. He was . . . on this side of the walk running in my direction.

Q. Did you see any rush of students going past you towards the Guard at the time of the shooting or just prior to the shooting?

A. No, I did not.⁷⁷

Donald Roese was a reporter for the Akron Beacon-Journal in 1970, and on May 4th he was covering the events at Kent for that newspaper. Like Ronald McNeese, Roese followed to the left flank of the Guard as the troops marched to the area of the Pagoda. When the firing began, Roese was approximately 90 feet from the Guard, out of the line of fire. At U. S. v. Shafer, et al., he testified as follows:

Q. As you got to the crest of the hill, were you hit with any rocks?

A. No.

Q. Did you see anyone else hit with any rocks?

A. No.

Q. Did you see any movement of any numbers of students toward the Guard at the time of the shootings?

A. Not at the time of the shootings, no.

Q. Did you see any prior to that?

A. I saw a group of--a small group of students that would move closer to the Guard. It was nothing that I hadn't seen, nothing

unusual, nothing that I would have photographed. 78

Harold Walker was a student photographer on May 4, 1970; though not attached to any particular publication on that date, several of his photos were later published by the York Daily News. When the shooting began, Walker was descending the steps in front of Taylor Hall. At U. S. v. Shafer, et al., he testified as follows:

- Q. Just prior to the shooting, did you see any rush of students towards the National Guard?
- A. No, I didn't. I was coming out of the building and if there was a rush I would have been knocked over. There was nobody around me at all . . .
- Q. Did you notice any significant movement of people in any direction?
- A. There was just general--people going in different directions. 79

Gregory Moore was also a student photographer on May 4, 1970. When the first shots rang out, he was located on the Taylor Hall veranda, approximately one hundred feet away from the Guardsmen. At U. S. v. Shafer, et al., he testified as follows:

- Q. Now in Exhibit 83, the first photograph you took, was that taken in reaction to the round of shooting?
- A. Yes, it was . . . I was aiming and when I heard the shots, I took the picture.
- Q. Does anyone appear in that photograph, other than National Guardsmen?
- A. There is an individual, a student, presumably, who was between Taylor Hall and Johnson Hall.

Q. Would you point out on Government's Exhibit Two where that person was?

A. In approximately this position here.

Q. Would the witness please stand and measure for us the distance between the southeast corner of Taylor Hall and where you place that student?

A. About 80 feet.

Q. Now, do you recall seeing any other persons in the area between Taylor Hall and Johnson Hall at the time of the shooting or just prior to the shooting?

A. No, I do not.⁹⁰

Stephen Schueler, a student, was located on the veranda of Taylor Hall when the shooting commenced. At U. S. v. Shfer, et al, he testified as follows:

Q. Did you see or observe a large rush or rush of people towards the National Guardsmen?

A. No, sir, I did not.

Q. Just before the shooting?

A. No.⁸¹

David Eabs, a student, was standing on the Taylor Hall veranda. At U. S. v. Shafer, et al, he testified as follows:

Q. Now, at the time you heard firing, are you able to tell us where students are?

A. Yes . . .

Q. Would you describe that, please?

A. With me, located on the porch area and with the Guard at this point {indicating}, there were some students in this vicinity here {indicating}. Those were all that I noticed; if there were any behind them

I didn't--I couldn't recall.

Q. Are you indicating an area southeast of the northern most walkway that runs along Taylor Hall porch?

A. Yes, I am.

Q. Where, in your vision, was the students closest to the Guard at the moment the shooting begins?

A. The students closest to the Guard were in this area here, between the sculpture and the southern most walkway of Taylor.

Q. Do you recall how many students were in that area?

A. Three.

Q. Approximately how many students would you place in the area southeast of the northern-most walkway?

A. In that locale, there were about 40 students, with the bulk of those being closer to the parking lot. In my memory I keep describing the crowd as a fan, with a few at the head and more fanning out in the rear.

Q. Are you able to testify to the movement, if any, of that crowd of about 40?

A. Yes. In that group, toward the rear of that group, I recall some individuals running.

Q. And how far up the hill were they when you became aware of the firing?

A. They are here [indicating] . . .

Q. Would you please step down, take this scale and measure the distance between the Guard and the place you put this crowd of approximately 40?

A. Approximately 190 feet.⁸²

Michael Glaser, a professor at Kent State University, was taking photographs from the Taylor Hall veranda when the firing

commenced. At U. S. v. Shafer, et al., he testified as follows:

Q. What is in this picture?

A. The Guardsmen are walking towards the shelter area with one, two students walking towards the Guardsmen. One has books under his arm; another is standing still
 . . .

Q. Do you have any recollections as to how long before the shooting you took this photograph?

A. I think it was around 20 seconds.

Q. Did you see any rush of students up the hill toward Taylor Hall in the direction of the Guard just prior to the shooting?

A. No, I did not.

Q. Did you hear any heightened noise level
 . . . ?

A. No.

Q. Did you hear any chants like, "Kill, kill, kill" at about that time?

A. Not that I recall.⁸³

Charles Edward, a member of the KSU faculty, was on the Taylor Hall veranda when the firing began. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. In the entire ground area {between }the sidewalk and sculpture, how many students were there in that 75-90 foot area?

A. I saw no group of students. I saw no cluster. I would say there were no students in that area . . . except, I recall a straggler or two.

Q. For how long were you at this position at the metal railing . . . before the firing started?

A. I would say 5 minutes.

Q. Would you tell us whether you recall any stones, rocks, missiles, anything at all, thrown at that time from anywhere at any one?

A. I didn't see any, sir.

Q. Do you have good eyesight?

A. I make my living with my eyes, sir. I'm a photographer. 84

James Woodring, a Kent State student, was on the Taylor Hall veranda when the firing commenced. He testified before the Scranton Commission as follows:

Q. Could you describe whether the rock-throwing escalated or decreased as the Guard moved up the hill back to the Pagoda?

A. On their march up towards Taylor Hall, it slacked off to practically nothing.

Q. Was there any movement on the part of the crowd in the parking lot?

A. The crowd in the parking lot . . . was moving at the same rate of speed as the retreating Guard was. 85

William Gerstenslager, a Kent State student, was in the parking lot area when the first shot rang out. At Krause, et al. v. Rhodes, et al. he testified as follows:

Q. {What} was your field of vision?

A. I was watching that area.

Q. Let the record show that he drew a line which I take from the Pagoda, the shelter, to the angle that is formed by the east and west wing and the north and south wing of the Johnson Hall, directly into the apex of the angle, that is what it is called in geometry.

I ask you, whom did you see in the way of person or persons in that entire area described?

A. I saw no one except the Guardsmen coming up in the Pagoda area and under the trees.

Q. Where did you see a parking meter that day?
{Note: see the earlier testimony of Guardsman Dwight Cline.}

A. It was near the {Pagoda} area.

Q. What was the position of that parking meter that you saw?

A. It was lying perpendicular to the building.

Q. On the ground?

A. Yes.

Q. And what time did you first notice a parking meter there?

A. When I got up for class early that morning, approximately 7:00 o'clock . . . on May 4.
BB

Rae Stiegemeier, a student at Kent State on May 4, 1970, was on the Taylor Hall veranda when the shooting began. At Krause, et al. v. Rhodes, et al., she testified as follows:

Q. Would you describe the activities of the students . . . during the time that the Guard was ascending the hill?

A. Yes. Most of the students were {between Taylor and Prentice Halls} . . . some were moving towards Taylor Hall on the balcony, and a few were at the base of the hill in the grassy area and they were just walking around, looking all directions, trying to figure out what was going to happen next.

Q. Was there any general movement in any particular area, any particular direction?

- A. No, no movement at all at this time. They were anticipating, I think, what the Guard were going to do next, where they were going . . . they were just standing around, looking around . . . They were just walking back and forth and they were talking to someone next to them . . . 10 or 15 seconds before the shooting, most of the students were still back beyond the parking area.

Just prior to the shooting, there were not students in front of me, I would say no students on the right side of the sculpture that I could see. The nearest student was probably 120, 125 feet from the Guard . . . I saw nobody from the sculpture forward at all.

No rush of students. I saw no rock-throwing and heard no profanity used at that time.

- Q. . . . were there any students chasing the Guard?

A. No, not at all.

- Q. Any other acts . . . ?

A. No. Students were just walking around, watching and observing.

- Q. How many people were there on the {ver-
anda} . . . ?

A. I would say the group around me was no more than 20, 25.

- Q. Miss Stiegemeir, with respect to the persons whom you saw on the porch of Taylor Hall, would you describe their activities for us, please?

A. The people around me were just looking out, watching what was going on. There was no movement. A few people were going in and out of the building, but that was it . . .

- Q. With respect to those persons, was there any violent activity, rock-throwing,

shouting?

A. No.

Q. Did you hear any students chanting, "Kill, kill, kill"?

A. No. I did not.⁸⁷

Jerry Lewis was a Professor of Sociology at Kent State University on May 4, 1970; in the past eight years, Lewis has published several Kent-related articles in the periodical Social Problems. When the shootings occurred, he was located in the parking lot, not far from where Jeff Miller fell. Lewis testified before the Scranton Commission as follows:

Q. Did you see a rush of the Guard?

A. At no time did I ever see a phalanx of students charging the Guard. I did not see this wave of students charging up the hill that General Canterbury saw. I had a feeling that General Canterbury and I weren't in the same place at all.

There was a body of 10, 15 students carrying on an interaction with the Guard . . . most of the students were merely watching. I did not see this kind of human wave General Canterbury testified was moving up towards him and it was my feeling that they were moving, but not charging; they were just trying to follow the action.

Q. Did you see the Guard move up the hill?

A. Not only did I see them, I followed them.

Q. Did you see any rock-throwing?

A. I did not see any rock-throwing at that time. I saw a group of 10 to 15 very close; it seemed that they were yelling . . . they were darting towards the Guard. There was no crowd.⁸⁸

Sharon Jacobs viewed the events of May 4, 1970, from her room in Prentice Hall. At Krause, et al. v. Rhodes, et al., she testified as follows:

Q. At the time that the Guard was at the crest of the hill, as you saw it, what, if anything, did you observe with respect to students nearer to the Guard than the sidewalk coming out of Taylor Hall and running in front of the {Pagoda}?

A. I didn't see any students.

Q. What, if anything, did you observe with respect to students between the parking area and the southwestern-most sidewalk of Taylor Hall?

A. The students, there were students on the veranda, about two or three around the sculpture, that were going in the direction of Taylor Hall.

Q. Did you observe any movement of persons . . . in the area in front of Taylor Hall between this southwestern sidewalk and the parking lot?

A. Now, there was a movement of students from this grassy part of this angle right here {indicating}.

Q. Which is the corner of grass near the parking lot, right?

A. Yes, near the parking lot and walkway of Taylor.

Q. From that area where?

A. Toward the area between Prentice Hall and Taylor Hall.

There was also movement of people on the walkway just behind the west end of Prentice . . .

Q. Did you see any other movement taking place on the hillside in front of Taylor Hall?

A. No.

Q. Was there any movement in the parking lot, this is during the time just before just when the Guard reaches the crest of the hill?

A. Yes, there was movement from the Prentice Hall side of the parking lot to the cars that were parked in the parking lot.

The people were standing in the parking lot, just standing . . . there may have been a person on the Prentice side walking toward someone to talk with them. 89

Joy Bishop Hubbard, a freshman in 1970, witnessed the events of May 4 from the roof of Johnson Hall, a vantage point she shared with several other students. At Krause, et al v Rhodes, et al, she testified as follows:

Q. In the area in front of where the Guardsmen were firing, did you notice any students rushing or running toward them?

A. In the area between where I was standing on Johnson Hall and where the Guards are, I didn't see them rushed by students.

Q. Do you have any memory of seeing any rocks in the air being cast in the direction of the Guard at the moment the shooting was going on?

A. No, I don't. 90

Robert Pickett, a Kent State student in 1970, followed behind the Guard as they marched towards the Pagoda; when the firing commenced, he was approximately 60 feet away from the troops. At Krause, et al v Rhodes, et al, Pickett testified as follows:

Q. {As the Guard neared the crest of the hill}, were any students throwing rocks . . . ?

A. Not then, no . . . I would have been hit had there been rocks.

Q. As the Guard was up on the hill, did you hear anything at all hitting the Pagoda itself?

A. No, sir, I did not.

Q. And as the Guard was up on the hill, did you hear any screaming, "Kill, kill, kill"?

A. No, sir, I did not.

Q. Where were the students at that point?

A. . . . the closest student at any given point was approximately 50 or 60 feet, okay? 91

Deborah Denton, a KSU student, was in the parking lot when the firing commenced. At Krause, et al. v. Rhodes, et al., she testified as follows:

Q. Did you have a clear and unobstructed view of the troops as they came up to the Pagoda?

A. Yes.

Q. Now, at any time can you tell what, if anything, any students anywhere were doing with regard to the troops?

A. I saw nothing but people milling around . . . there were no rocks thrown, there was no group of people moving in any direction. There were a few people, mostly in little groups, like two or three.

I recall around me groups of two to five people . . . standing there and I am assuming they are doing the same thing I was, not really knowing what was happening . . . As the troops were going up the hill there were people standing and walking slowly, milling around . . . I saw no organized groups of students anywhere moving in any direction toward the Guard. 92

Robert Dyal was a Professor of Psychology at Kent State University on May 4, 1970. When the firing commenced, Dyal was located in the parking lot. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. In this entire sweep of area . . . could you tell what, if anything, is being done by any students . . . ?

A. I saw students meandering . . . with books in their hands and they were on their way to or from classes. It was a lunch period.

The crowd was just standing around wondering what was going on . . . We were observers. We were not hostile participants in any fashion and there was a great deal of clear space between the Guard and their destination back to the ROTC shack.

Q. Approximately how many students or individuals were in the shelter area and the corner of Taylor Hall, all the way down to {the} grassy area where it ends in a walk?

A. Well, a half-dozen, maybe 10 or 12 at the most.

Q. Was there any stone-throwing at all at this time?

A. No. None whatever.

Q. And were these half-a-dozen or so persons . . . moving in any concerted direction?

A. There was no movement towards the Guard.⁹³

Dennis Durand, a student on May 4, 1970, was located in front of the Guard before they turned to fire. He testified before the Scranton Commission that "there was no opposition to the forward motion of the Guard."⁹⁴

Mike Ailwitz, a student, was located on the practice football field when the firing broke out. He testified before the Scranton Commission as follows:

Q. Did you see any rock-throwing {immediately prior to the first shots}?

A. No, I did not.

Q. Did you see a movement of the crowd from the parking area towards the Pagoda area or up the sidewalk past Taylor Hall at that time?

A. No, I didn't.⁹⁵

Jack Deegan, a student, trailed the Guard up the hill; when the firing began, he was behind them. At Krause, et al. v. Rhodes, et al., Deegan testified as follows:

Q. And how many students were there in this area--this quadrant or square of area from the {Pagoda} all the way down this walk here {to the sculpture to the corner of Taylor Hall}?

How many students were in that whole area?

A. I saw only one student.

Q. Where were most of the students just before the shooting?

A. On the road and right next to Taylor Hall, the north northeast corner.

Q. Now, I ask you, sir, within 30 seconds before the shooting started, tell us how many students were there in the entire vista or panorama that you had looking from where you were, looking at this point in the direction of Taylor Hall and down the hill?

A. Well, sir, there was one student between the shelter and the first walkway . . . There were two or three students right in

here, on the other side of the road. Those are all the students I saw just prior to the shooting.

Q. What were all of these students doing just before the shooting?

A. Watching the Guard.

Q. What else?

A. There were some chanting, some obscenities, but that's about it.

Q. Tell us whether or not you saw any throwing of stones.

A. Just prior to the shooting, I didn't see any stones being thrown at all.

Q. When, for the last time, did you see any stone-throwing?

A. On the practice field . . .

Q. Was there any movement--tell us whether or not there was any movement of the students . . . Was there any movement or rushing to go anywhere or do anything before the shooting started?

A. I didn't want to get too close to the Guard, and I don't think anybody else did.

There was no--there was no rush, it was just a long lingering follow that the students were way behind the Guard. 96

Stephen Titchell, a Kent State student, may be seen in Stephen McNees' photographs of the troops moments before the shootings; when the first shot rang out, Titchell was to the left of the Guard. At the Scranton Commission's hearings, he testified as follows:

Q. What was the situation as you observed it immediately prior to the shooting?

A. As they reached the top of the hill, they turned and fired. I can think of no reason . . . I was taken completely by surprise.

Q. Did you see any rocks strike any of the Guardsmen?

A. No, I didn't.⁹⁷

Peter Winnen, a Vietnam veteran and Kent State student in 1970, was quoted by Michener as saying, "I judged they [the Guard] were withdrawing because they knew they had a clear run back to the ROTC building, with practically no students facing them . . . I wasn't very faraway."⁹⁸

SP4 James Farriss of Company A did not discharge his weapon on May 4, 1970. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. So when you turned, you think you saw a couple of students [in the sidewalk area]?

A. Several.

Q. How many would "several" be?

A. 3 or 4.

Q. What were they doing, sir?

A. I don't know what they were doing. They were standing up let's put it that way.

Q. Any sticks in their hands?

A. I don't remember seeing anything in their hands.

Q. Any rocks?

A. I don't remember seeing anything in their hands.

Q. Did they present to you a source of danger or menace to your life?

A. No, sir.

Q. You didn't shoot at them, did you?

A. No, sir.

Q. You didn't shoot at anyone, did you?

A. No, sir.

Q. Were they the closest students that you saw there?

A. That I saw, yes.

Q. And at that instant, is it fair to say that you saw no rocks in the air?

A. That's true.

Q. And is it fair to say that within the last few minutes you had not seen any rocks in the air?

A. In the past few minutes, no sir.

Q. How long before the shooting was the last time you had seen any object flying in the air?

A. It was the time we left the practice field.

Q. And you weren't struck by any rocks on the way up the entire field area until you turned . . . ?

A. Yes, that's right.⁹⁹

PFC James Brown, of Company A, fired his rifle twice into the air on May 4, 1970. At Krause, et al. v. Rhodes, et al. he testified as follows:

Q. Now, just prior to the shooting, would you point to the map as to where the closest student was before the firing occurred?

A. I would say down, maybe down around here {indicating}.

Q. Can you estimate the approximate distance?
You can refer to the scale, if you like.

A. 50 yards, approximately.

Q. And was it your understanding that they were firing as a warning, to scare the students?

A. Yes . . .

Q. I see. Now, just before you fired, Mr. Brown, was your life in danger?

A. No, my life was not in danger then . . .
I was not afraid for my life . . .

Q. . . . why did you fire?

A. I thought there was an order probably that came from the other end that they were supposed to fire up in the air. 100

PFC Larry Mowrer, of Company C, fired three rifle rounds into the air. At Krause, et al. v. Rhodes, et al., Mowrer testified as follows:

Q. Didn't consider your life in danger, did you, at the time you shot?

A. No, sir.

Q. You didn't hear anybody yell, "Kill, kill, kill," did you?

A. It was just a collage of noise.

Q. Did any students threaten you at any time?

A. No, sir. 101

SP4 Robert Myers, of Company A, fired two rifle shots into the air. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. . . . at the time that you turned, you saw students no closer than 50 to 60 yards . . . ?

A. In my estimation, yes sir.

Q. Why would you discharge your weapon a second time in the area of the students that you saw running away, hitting the ground?

A. Excitement of being on the hill. We were afraid. I was scared.

Q. Of those particular students 50 to 60 yards away?

A. Yes, sir. 102

SP4 William Hershler, of Company A, did not fire his weapon on May 4, 1970. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. Did you see any reason to shoot anybody at that time?

A. No, sir, I did not.

Q. Is it a fair statement to say that you were astounded and stunned by the shots?

A. Yes, sir.

Q. Is it a fact that you saw no onrushing students at that time, that instant when you turned around?

A. From where I was, I saw nobody coming.

Q. Is it a fact that you felt this was not a firing situation?

A. To me, it was not . . . there didn't seem to be much crowd anymore. 103

Sergeant Michael Delaney, outfit unknown, also did not discharge his weapon on May 4, 1970. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. Where were any students in respect to the location of the Guard that you observed . . . ?

Q. There were students along Taylor Hall, around this area, around Johnson Hall, and . . . Stopher Hall.

Q. What if anything did you see with respect to the actions of these students at that time?

A. At that point they were strictly observers. They were standing. There was no sudden movement.

Q. Did you see any objects in the air or striking anything . . . ?

A. No, sir.

Q. I asked you earlier something whether you yourself had ever been in fear of your life?

A. I said I had not.¹⁰⁴

Captain John Martin was the commander of Company A on May 4, 1970. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. Were you in fear for your life . . . at the time the weapons were discharged?

A. Sir, the concern for my life at that time never crossed my mind.

Q. Did you have any reason to believe, on May 4th 1970 that weapons were to be discharged?

A. No, sir . . .

Q. Did you see any Guardsmen struck by any object while you were proceeding from the practice field up the hill where the Pagoda was?

A. No.

Q. Did you see any assault on any Guardsmen at that time?

A. No, sir.

Q. When you heard the shots being fired, did

you think that the National Guard was being attacked?

- A. I don't recall sir, even considering that . . . some students had followed the Guardsmen on our right flank. At this time, we couldn't see them. 105

Colonel Charles Fassinger was General Canterbury's second-in-command at Kent State on May 4, 1970. At Krause, et al. v. Rhodes, et al., he testified as follows:

- Q. Now, was there anything that you can tell us now which led you to believe that as the troops and yourself approached the crest of that hill, that there was going to be a discharge of weapons, anything at all?
- A. Absolutely not, no sir.
- Q. What physical acts did the crowd do with respect to the movement from the practice field up to the point of the shooting?
- A. The rock-throwing was maybe a little less than down at the practice field, but not much . . . the chanting became a great deal louder and changed its complexion from just the normal cuss words to . . . not only "Pigs off campus," but "Kill pigs. We got them now. They are out of gas."

Just prior to the shooting . . . I had been hit with a rather large object that knocked me down on one knee.

- Q. Was your life in danger?

A. No. 106

Upon reading all of the above statements, one is tempted to ask: were these people witnessing the same event? Were General Canterbury and Jerry Lewis on the same campus? Were SP4 Farriss and SP4 Pierce in the same contingent of troops? Michener was

correct when he wrote that "the testimony here is so divergent, it is as if witnesses were observing two different battle actions."¹⁰⁷

Part of the reason for this divergence is verbal. One person's "mob of charging students" is another's "crowd of observers following behind the Guard." At what point does a group of students become a "rush"? At what point do a "few rocks" become a "barrage", and at what point does that "rush" and that "barrage" become a "mortal danger" to armed troops trained in riot control and self-defense? Part of the reason is also perceptual, and in considering this it must be remembered that many of the witnesses cited above had vested interests in the outcome of the proceedings at which they were testifying. Most of the Guardsmen were defendants and several of the students were plaintiffs in a 46 million dollar law suit; this could have affected their recollections of the events of May 4, 1970, particularly in light of the fact that both trials took place almost half a decade after those events occurred.

This question of differing perceptions is essentially a psychological one, and hence not in the field of this writer. But a few factors might be noted. The Guardsmen's perceptions were surely affected by the fact that they were probably hot, tired and hungry. After being on duty all day Sunday, they had not been released until 6:00 p.m., and had "just lined up for their first hot meal of the day when they were sent back to duty on campus," according to the Scranton Commission.¹⁰⁸ The reason was the sit-

in at Prentice Gate. Still without a decent meal, the members of G Troop and Company A finally got to bed around one o'clock Monday morning, only to be roused three hours later to relieve another unit.

The Guardsmen's ability to accurately perceive what was happening around them was also affected by a far more tangible factor. The Justice Department's summary stated that "the Guardsmen could not see well in their gas masks. One, Sgt. Dale Antram of Company A, was forced . . . to remove his eyeglasses when he put on his gas mask."¹⁰⁹ Michener wrote that "their gas masks prevented them from seeing just what was happening,"¹¹⁰ and the Scranton Commission explained that the gas masks could not be used in conjunction with normal eyeglasses.¹¹¹ Prescription gas masks were not issued.¹¹²

Several Guardsmen complained about the gas masks. Grant and Hill argue that "the gas mask was one of the foremost contributing factors to the tragedy. Any exhausting exercise, while wearing a gas mask, makes breathing extremely difficult, causing a feeling of panic. This feeling can be most closely compared to that of an underwater swimmer who does not reach the surface as soon as he would like. Tremendous heat is generated inside the mask, which in turn causes the lenses to fog up and eyes to fill with sweat."¹¹³ PFC Paul Zimmerman, of Company C, told an Akron Beacon-Journal reporter essentially the same thing, stating that "it's hard to see in a gas mask."¹¹⁴ Several Guardsmen whose testimony is cited above concurred:

SP4 James Pierce:

Q. Could you see with your gas mask on?

A. I was quite impeded by the mask . . .

Q. When you say impeded by the gas mask, the goggles or the eyepiece comes around on a sort of a curve to the side of your face, doesn't it?

A. But they were quite steamed up. 115

SP4 James McGee:

Q. Were you able to wear your glasses with your gask mask?

A. No. . . . you have to take them off to put on the mask.

Q. How was your eyesight at that time?

A. Uncorrected, my eyesight was 20/80 . . . I couldn't see that well, sir . . . the farther away {an object} is, the worse {my vision} is. 116

PFC Lonnie Hinton:

Q. The status of your ability to see was rather impaired without glasses, is that so?

A. Right.

Q. And if you were to take your glasses off now, would your sight be about the same as it was at that time, roughly?

A. Approximately.

Q. Would you mind taking your glasses off, sir? Sir, can you tell me how many fingers I am holding in the air?

A. Three.

Q. May the record show that it is two. 117

Sergeant Richard Lowe:

Q. What effect, if any, did your gas mask have upon you?

A. I couldn't breathe.

Q. How about with respect to your ability to observe?

A. It was very impaired. It was hot that day, it was warm. We climbed the hill, and the gas masks were on. We were sweating. Tear gas burns the areas where you perspire. It was hard to see through the mask and breathing was somewhat restricted. 118

The temperature on May 4 was in the 80's. The Guardsmen were dressed in full uniform and were carrying equipment and weapons. At the time of the shooting, they had just marched 400 yards from the ROTC building to the practice field, then 160 yards back to the Pagoda, all over hilly terrain.

Another possible reason for the divergence in testimony has been offered by some writers.¹¹⁹ They theorize that the Guardsmen, being aware of their own Rules of Engagement and fearing legal prosecution, made up their self-defense story. This theory derives strength from two sources. The first is the Justice Department's summary of the FBI report, which contained these two surprising paragraphs:

We have some reason to believe that the claim by the National Guard that their lives were endangered by the students was fabricated subsequent to the event. The apparent volunteering by some Guardsmen of the fact that lives were not in danger gives rise to some suspicions. One usually does not mention what did not occur. Additionally, an unknown Guardsman, age 23, married and a machinist by trade, was

interviewed by members of the Knight newspaper chain. He admitted that his life was not in danger and that he fired indiscriminately into the crowd. He further stated that the Guardsmen had gotten together after the shooting and decided to fabricate the story that they were in danger of serious bodily harm or death from the students. The published article quoted the Guardsman as saying, "The guys have been saying we got to get together and stick to the same story, that it was our lives or them."

Most of the Guardsmen who did fire their weapons do not specifically claim that they fired because their lives were in danger. Rather, they generally simply state in their narrative that they fired after they heard others fire or because after the shooting began, they assumed an order to fire in the air had been given. As a rule, most Guardsmen add the claim that their lives were or were not in danger to the end of their statements, almost as an afterthought. . . . the FBI interviews of the Guardsmen are in many instances quite remarkable for what is not said, rather than what is said. Many Guardsmen do not mention the students or that the crowd or any part of it was "advancing" or "charging". Many do not mention where the crowd was or what it was doing. 120

The second source for this conspiracy theory is the testimony of Captain Ronald Snyder, Commander of Company C, at Krause, et al. v. Rhodes, et al.¹²¹ Snyder does not appear to have been the Guardsman who wrote the letter to the Akron Beacon-Journal who was mentioned in the Justice Department's summary. First, he testified that he did not fire his weapon on May 4, 1970.¹²² Second, he was neither 23 nor a machinist by trade in that year.¹²³ Third, he testified at Krause, et al. v. Rhodes, et al. trial that he was not the author of the letter.¹²⁴ Snyder's testimony is full of surprises; among other things, he stated that he lied to Michener

when he told that writer of a pistol he found on the body of Jeffry Miller. At Krause, et al. v. Rhodes, et al. he testified as follows:

Q. What happened?

A. Well, there was a conversation between two or three people in the {National Guard} Orderly Room, and there was some kidding going on, and I think I made the statement at that time, "Well, I got the answer to the whole thing; it is self-defense." I was kidding at the time.

Some time later, I found myself locked into the story, and that's how it came about . . . it started out as a kidding thing, because everybody was quite concerned about legal actions against them.

Q. Sir, do you know of any common story that was decided on by the Ohio National Guard subsequent to the shootings?

A. Yes.

Q. Sir, were there two common stories that Guardsmen decided to use in this case?

A. Yes. There was the story . . . that there was snipers, one, and, two, of the self-defense. The mob thing. 125

These two elements of evidence, the testimony of Captain Snyder and the excerpt from the Justice Department's summary, have yet to be refuted. But I do not believe that this evidence, standing alone, established the existence of a conspiracy among the Guardsmen to fabricate their assertion of mortal danger. Besides the gaps in the existing evidence, these conspiracy theories cannot account for the testimony of civilians such as Paul Locher, who stated that there was in fact a life-threatening mob of civilians descending upon the troops immediately prior to the shooting. 126

If eyewitness testimony were the only available evidence on the events prior to the shooting, it would be impossible to answer the thesis question of this paper. But there is a great deal of supplemental evidence, including a moving film and a number of still photographs of the crucial stages of the confrontation at Kent. The sum of this evidence does not support the proposition that the members of the G Troop and Company A were in mortal danger from a mob of students immediately prior to the shootings.

Chris Abell took the Zapruder film of the Kent State tragedy. Abell, a sophomore, took his movie with an 8-millimeter Bell & Howell camera equipped with a telephoto lens. The movie was taken from a window on the ninth floor of the Tri-Towers Dormitory complex. The Scranton Commission wrote this of the Abell film:

It indicates that the main body of aggressive students was about 60 to 75 yards away {from the Guard} at the foot of the hill near the corner of the Prentice Hall parking lot . . . as Guardsmen reached the top of the hill, some students surged from the southern end of the parking lot up towards the Guardsmen on Blanket Hill. The film is too indistinct to tell how many of the students involved in this movement were throwing rocks. The leading edge of this crowd appears to have advanced to a point no closer than 20 yards from the Guardsmen, with the main body 60 to 75 yards before the gunfire began.

The KSU Commission concurred. While finding the film unclear and difficult to interpret, the Commission concluded that "it shows a body of twenty demonstrators in the vicinity of the

Guard by the Pagoda; they are spread out rather than clustered; the closest to the Guard being perhaps 50 to 60 feet away . . . the film does not preclude there having been demonstrators harassing the Guard closer than that."¹²⁸ The Commission should have explained this last statement. The film was continuous, and the camera had a clear view of the panorama between Tri Towers and the troops. If there were any number of students harassing the Guard from closer than 60 feet, why would the film not pick it up?

Michener also discussed the film, though he spent more time on its history than on its contents. On the question of the "surge" of students, Michener was blunt: "to have claimed, as some did, that the group of students hurrying up from the right constituted a 'mortal danger' or a 'howling mob bent on killing the Guard' required either extra sensory perception or a new definition of words."¹²⁹ This aspect of Michener's book may be exempt from many criticisms of that work discussed earlier, because here the author himself viewed the film and does not rely on the testimony of others to support his conclusion.

The Justice Department, in preparing its case for U. S. v. Shafer, et al., commissioned the electronics firm of Electromagnetic Systems Laboratory to analyze the Abell film. ELS image analyst Robert Johnson conducted a battery of tests and examinations of the movie. Johnson received a Bachelor's Degree in Mathematics from Oregon University. Upon graduation, he was hired by the Central Intelligence Agency as a photogrammetrist; during his four-year employment with the CIA, he also received 700 hours of extra

training in the field of image analysis. After leaving the CIA, Johnson worked for Raytheon as a photogrammetrist. In 1966, he was hired by Electromagnetic Systems Laboratory as an image analyst. In his examination of the Abell film, Johnson employed the technique of photogrammetry {the science of making measurements based on photographs of objects}, digital image processing {which is done with computers and involves making a mathematical model of the photograph, with the goal of enhancing the image} and image interpretation {which involves the use of knowledge of image characteristics and geometry to analyze the content of an image}. The Court refused to allow Johnson to testify at U. S. v. Shafer, et al., but he was sworn in as an expert at Krause, et al. v. Rhodes, et al.:

- Q. What were the objectives of your analysis?
What were you looking for?
- A. We were asked to determine the positions and locations of individuals identified to us as the student group in the area around Taylor Hall.
- Q. What did you ascertain about the location and movements of any persons {in the area forward of the sidewalk, including the sidewalk itself}?
- A. We detected five individuals . . . these people were the closest to the Guard.
- Q. Did you detect any movement on the part of any of these persons . . . ?
- A. Yes, sir . . . we detected three individuals crossing the sidewalk.
- Q. In what direction, if you are able to tell?
- A. Away from the Guard.

Q. And as to the other two individuals in that area, were you able to detect any movement at all?

A. No, we were not.

Q. With regard to this area {an 85-foot arc from the Pagoda, beginning with the side-walk} . . . were you able to make any determination as to the location or movement of persons?

A. . . . there were 10 . . . we were looking specifically for movement either toward or away from the Guard, and we could not detect any such movement.

Q. How about {the other areas}?

A. . . . there was some motion toward the Guard.

Q. Did you make any determination in your analysis as to the speed of movement on the part of whatever individuals were moving?

A. Yes, we did.

Q. And what was that determination?

A. Our determination was that the speeds in the areas that I have stated that were toward the Guard, were in the range of three to ten miles per hour.

Q. Based on your analysis, Mr. Johnson, are you able to say whether the movement on the part of those persons was walking speed or faster, running speed?

A. . . . from a basic walk to a slow run.

Q. Do you have an opinion based on your analysis as to whether there was any rush of persons toward the Guard in the opening moments of the shooting sequence?

A. Yes.

Q. Will you tell us what that opinion is, please?

A. My opinion is that there was not.¹³²

This conclusion is supported by a multitude of still photographs, many taken by what Michener called "a group of incredibly daring novices."¹³³ Most of these photos appear in the album supplied with this paper. The Justice Department's summary of the FBI report stated that "photographs and television film shows that only a few students were located between the Guard and the Commons. They could easily have continued in the direction in which they had been going. . . No crowd or mass of people--close to the Guard or otherwise--is identifiable . . ."¹³⁴ The Scranton Commission noted that "in the direction the Guard fired, photographs show an open space in front of the Guardsmen of at least 20 yards. To their side, the nearest student, one of several on the terrace of Taylor Hall, was at least 15 yards away."¹³⁵ Michener concluded that "available photographs do not support the claim of extreme danger. In picture after picture, empty space surrounds the Guard. They are under attack neither from the left nor right, neither, from the front nor from the rear."¹³⁶

The photograph numbers in the album relate to the blue notations on the map. Photograph 1 in the album depicts the Guard as they are leaving the practice football field; G troop is to the left, straggling behind Company A. Photograph 2 was taken moments later, as the troops were beginning their march back to the Commons. Photograph 3 gives the view of the departing troops from behind the fence on the practice football field. The student on

the field appears to be throwing an object at the Guard. Photographs 4 and 5 show the troops as they approach the road enroute to Blanket Hill. General Canterbury, Major Jones and Sargeant Pryor appear as indicated.¹³⁷ Photograph 6 depicts the same scene from a different angle; it covers blind spots missed by Photographs 4 and 5, particularly the area behind the troops. Photograph 7 shows the troops crossing the road; the black markings in front of the Guardsmen are photographic imperfections.¹³⁸ In the right background is Prentice Hall, and in the left background is Taylor Hall. Note the crowd of students. Some witnesses state that these civilians moved to the area between Taylor and Prentice Halls; others testify that they remained by the parking lot and later charged toward the troops. In Photograph 8, the Guard has crossed the road and started their ascent of Blanket Hill to the Pagoda. There appear to be no students in front of the troops, impeding their progress to the Commons. This photograph was taken approximately three minutes before the firing began.

Photograph 9 depicts the same scene from a forward angle, covering the area behind the troops; the next four photographs depict the troops as they are entering the tree line. Photograph 14 apparently depicts a civilian throwing an object {circled}. The building in the photo appears to be Lake Hall, which would place this civilian at approximately 200 feet from the Guard. Given the size of the object encircled, it is unlikely that it hit its mark at this distance. Also note the man wearing a handkerchief over his face to try to protect himself from tear gas or perhaps to prevent identification. Photographs 15 and 16 also seem

to depict students hurling objects at the Guard. In the center foreground of Photograph 15, wearing a white shirt and dark jacket and carrying a cylindrical object in his pocket, is John Cleary, a student who was later wounded.

Photograph 17 was taken from in front of Taylor Hall; the dark object to the right is the metal sculpture. The troops are less than a minute away from the Pagoda, and there still seems to be no students impeding their course to the Commons. Photographs 18 through 20 provide several different views of the Guardsmen approaching the Pagoda. The camera-laden man nearest to the troops in Photograph 20 is Steve Titchell. Richard Harris testified at U. S. v. Shafer, et al. that he took Photograph 21 "ten seconds before they turned and fired . . . this scene remained the same up until the shooting."¹³⁹ G Troop has just crossed the last path before reaching the Pagoda. This picture seems to argue against General Canterbury's contention that a mob was bearing down on his troops; the students both in the parking lot and in front of Taylor Hall seem generally passive. At this moment, Allison Krause is near the station wagon in the center of the photograph, Jeff Miller is to the left of the car, Sandy Scheur is off to the extreme left walking toward the cameraman's position and William Schroeder is near Sandy.

In Photograph 22, the Guard has reached the Pagoda; the troops will turn in two or three seconds. There seems to be nothing to prevent them from continuing their forward march. The students appear to be close to the Guard, but the metal sculpture, seen

at extreme right, is 100 feet from the Pagoda.¹⁴⁰ The second Guardsman from the left, striding along, is Major Jones.

Photographs 23 through 26 seem to severely damage the assertion that a charging mob was within a few yards of the troops moments before the latter commenced firing. In Photograph 23, the Guardsmen have just completed their 135° turn. Note the three students atop Johnson Hall; they will be referred to later. Howard Ruffner appears in Photograph 24, which shows the scene on the Taylor veranda seconds before the firing began. The Scranton Commission noted that "this picture was taken at virtually the same moment as the preceding one, as indicated by the arm position of the left-handed Guardsman with a pistol who is visible in both pictures . . . the person closest to the Guard on the veranda is 15 yards away from the troops."¹⁴¹

Photograph 25 is a view of the scene between the Pagoda and the Commons, the Guard's destination when they left the practice field. They have turned but not yet fired; Tim Nighswander testified at U. S. v. Schafer, et al. that he "took that picture as soon as I saw the Guard reach the top of the hill. While I was taking it, the sounds of shooting began. The student near Taylor is the closest to the Guard, and he is 110 feet away."¹⁴² Photograph 26 was taken after the shooting had commenced. These two photographs lend strength to the Justice Department's assertion that the Guard "could easily have continued in the direction in which they had been going."¹⁴³

Photograph 27 shows the students on the Taylor veranda re-

acting to the sound of gunfire. On the grass beyond the rail, visible just over the head of the student nearest the camera is Joseph Lewis, gesturing at the Guardsmen with an upraised middle finger. There appears to be no one between him and the troops. Lewis is sixty feet away from the Pagoda; behind him, someone {perhaps Howard Ruffner} is ducking for cover, eighty-five feet from The Guard; finally, at the extreme left of the photograph, a third student is standing. Photograph 28 depicts the effect that the shots had on the students on the Taylor veranda.

Photograph 29 shows what was happening at the entrance of the parking lot, and Photograph 30 depicts the scene in the access road. Michener called this photo "the greatest comprehensive shot of the day . . . it is a terrifying photograph and bolts in the heart any easy comments about students being where they were not supposed to be."¹⁴⁴ Harold Walker, who was directly in the line of fire, took this photo as he was diving for cover. The firing is still going on, but Jeff Miller has already been shot in the face and may be seen at the left of the photograph.

Photograph 31 was taken by Ronald McNees. Most of the firing seems to have ceased, although the rifleman to the left of the large tree still seems to be aiming or shooting his rifle. In Photograph 32, General Canterbury {wearing gas mask atop his head}, has moved behind the front rank of shooters. Both he and Major Jones are clearly distinguishable in Photograph 33. Photographs 34, 35 and 36 show the scene after the firing ended.

Photograph 37 shows the positions of three of the four students

who were killed. Number one is William Schroeder; number two is Sandy Scheuer; number three is Jeffry Miller. The Guardsmen and the Pagoda may be seen at the upper right. Photograph 38 was taken on May 5, 1970, looking at the Prentice Hall parking lot from the Pagoda. It is evident from this photo why no students on the veranda were shot, though it may seem from earlier photographs that this should have been the case. The remaining photographs speak for themselves.

This photographic record gives the historian what even the massive chronicle of testimony at the civil trial cannot provide: these photos have frozen into time the images of the events leading up to the shooting. These photographs, combined with the Abell film, provide an excellent record of what was happening on Blanket Hill at 12:24, May 4, 1970. The former provides the detail lacking in the latter, and the latter provides the continuous filming lacking in the former. This evidence is a searing indictment of General Canterbury's testimony of mobs of rioters within "four or five yards" of the troops.

Two further aspects of the shooting also seem to argue against the assertion that the troops were confronted with a life-threatening mob of rock-throwing rioters immediately prior to the shooting. First, the distances between the troops and those students who were shot was great. Second, very few troops were seriously injured in the "rock barrage" which allegedly took place just before the first shots were fired.

If the wounded were arranged in order of their nearness to

the Guard, the nearest student was 60 feet away, the farthest 745 feet away, or nearly two-and-a-half football fields. The FBI determined those distances as follows:

Joseph Lewis: 20 yards
 John Cleary: 37 yards
 Thomas Grace: 66 yards
 Allen Confara: 75 yards
 Jeffry Miller: 85 to 90 yards
 Dean Kohler: 95 to 100 yards
 Douglas Wrentmore: 110 yards
 Allison Krouse: 110 yards
 James Russell: 125 to 130 yards
 William Schroeder: 130 yards
 Sandra Scheuer: 130 yards
 Robert Stamps: 165 yards
 Donald MacKenzie: 245 to 250 yards¹⁴⁵

Peter Davies noted the significance of these distances: "If the Guardsmen's claim that a crowd was charging them to within ten, fifteen, twenty, and thirty feet was true, then obviously most of the casualties would have been less than two hundred feet away. Why were they shooting at students, two hundred, three hundred and four hundred feet away from them, distances that removed any danger whatever to the soldiers?

"The staggering distances make the Guards' claim of self-defense not only ridiculous, but contemptible . . . everyone {in the Taylor Hall parking lot} was over two hundred feet away from the Guardsmen and either running away or lying flat on the ground. William Schroeder was lying prone . . . when a bullet slammed into his back. The most damning evidence against the Guard is the fact that their shooting was directed into {the parking lot} area, with the result that eleven of the thirteen students shot were two hundred feet or more from the Pagoda."¹⁴⁶

At least four Guardsmen did fire into the "mob". If that "mob" was anything resembling a solid mass of people and the troops were firing into that mass, then one would think that at least one student would have been wounded within "four to five yards" of the troops. The fact that none were supplements the photographic evidence already discussed and strengthens the conclusion that Joe Lewis at 60 feet was the nearest student to the Guard,¹⁴⁷ and that no howling crowd of students was in the immediate vicinity of the troops when the firing commenced.

The Guard also does not appear to have been subjected to a massive and life-threatening barrage of rocks immediately before the firing commenced. Photographs do not show them dodging rocks prior to, during or after their turn; photos also do not indicate missiles either in the air or on the ground. No doubt rocks were thrown but, as General Del Corso agreed, "a rock doesn't equal an M-1."¹⁴⁸ He stressed that the barrage must be significant before firing may be justified.

The fact that only one Guardsman was injured badly enough by rocks to require medical attention also seems to argue against the existence of this barrage. That trooper was Sargeant Lawrence Shafer, and he received his wound {a bruise on the left arm} a full fifteen minutes before the shooting; that injury did not prevent him from firing five rounds from his M-1 rifle later on Blanket

Hill. At Krause et al. v. Rhodes, et al., Shafer testified as follows:

Q. When was that picture taken, approximately?

A. May 7, 1970 . . . during the interview with the FBI.

Q. And at that time would you tell the Court and the jury about your physical condition?

A. My arm was in a sling. It was wrapped, and I had a severe bruise, internal bleeding in the arm.

Q. Will you tell the Court and the jury when you sustained injuries to your arm?

A. It was on the practice field.

Q. And how did it come about?

A. I was hit by a brick.

Q. Were you treated for your injury?

A. Yes.

Q. Were you hospitalized for any injury . . . ?

A. No, sir, I wasn't hospitalized.

Q. Was a cast applied for a broken arm, perhaps?

A. No, sir.

Q. Did anyone tell you that you had a broken bone in your arm?

A. No. The X-rays showed negative.

Q. How long {did you wear the sling}?

A. I believe the rest of the week.

Q. I see. And you have nothing permanent in the way of a disability in your hand or your fingers or your arm and shoulder? Is that a fair statement?

A. That is fair. 149

A second Guardsman was, in fact, treated at Robinson Memorial Hospital after the shooting. Sergeant Dennis Breckenridge collapsed after the firing, but his injury was not caused by rocks; Breckenridge was suffering from hyperventilation. At Krause, et al. v. Rhodes, et al., he testified that he went into a "sort of fainting spell . . . a nervous condition known as a hyperventilation condition."¹⁵⁰

Confirmation that these two Guardsmen were the only troops injured seriously enough on May 4, 1970, to require medical care comes from five sources. First, George Warren, a staff investigator for the Scranton Commission, testified before that body that "the Ohio National Guard's Statement of Inquiry found that one man was injured by the demonstrators badly enough to require hospitalization." This Guardsman, who "received an injury to his arm,"¹⁵¹ was undoubtedly Shafer, though it appears that he was not in fact hospitalized. Second, the Justice Department's summary of the FBI report found that "only one Guardsman, Lawrence Shafer, was injured on May 4, 1970 seriously enough to require any kind of medical treatment. He admits his injury was received some 10 to 15 minutes before the fatal volley was fired. No Guardsman claims that he was hit with rocks immediately prior to the shooting."¹⁵² Third, Major John Simons, Chaplain of the Guard units in Kent, visited Robinson Memorial Hospital on the evening of May 4 for the purpose of ministering to the needs of any injured troops. At Krause, et al. v. Rhodes, et al., Simons testified as follows:

Q. Did you see any Guardsmen there?

A. Yes.

Q. How Many?

A. One

Q. What was wrong with him?

A. Hyperventilation.

Q. Anything further beyond that?

A. Negative.¹⁵³

Sergeant Michael Delaney also made a determination of the number and condition of any Guardsmen injured during the events of May 4, 1970. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. . . . did you have occasion to check out any injuries of any Guardsmen?

A. Yes, I did.

Q. What did you determine of your own personal knowledge and observation?

A. I went to Robinson, I called Robinson Memorial Hospital in Ravenna to try and substantiate what injuries there had been to Guardsmen or students . . . I observed one National Guardsman that I brought back to the medical area in my jeep and he emotionally was very upset.

Q. Other than that, were there any other injuries?

A. The other attempt I made to verify was in the bivouac area . . .

Q. Did you observe any injured persons in that area, injured Guardsmen?

A. I did not.¹⁵⁴

Finally, it should be noted that no Guardsmen other than

Shafer and Breckenridge testified at either trial that they were treated for injuries received on May 4, 1970. The Justice Department's summary stated that "seven Guardsmen claim that they were hit"¹⁵⁵ by rocks during the march from the practice field to the Pagoda. The summary did not name names, but seven Guardsmen testified at Krause, et al. v. Rhodes, et al. that they were struck during that period. All testified as well that they received no medical care for these injuries.¹⁵⁶

From all of this material, it seems to this writer that three conclusions follow: first, eyewitness testimony, for whatever reason, is conflicting to the extreme. As can be expected, most of the students perceived no mob--life-threatening or otherwise--in the vicinity of the troops when the firing began. Conversely, as can be expected, most of the Guardsmen did perceive the existence of such a mob. There is enough testimony to support either of the extreme views of this aspect of the tragedy at Kent, but the large view of all of this testimony points to only one conclusion: no conclusion is possible on the strength of this evidence alone. Other evidence is needed. Secondly, the existing photographic evidence does not support the claim of the existence of a mob about to engulf the troops. The Abell film is a continuous, though fuzzy, view of the scene from Tri-Towers, across the Prentice Hall parking lot to the Pagoda. That film, according to image analyst Robert Johnson, shows only five students within 85 feet of the Guards; of those five, only two were moving towards the troops, and they were both walking. This is reinforced by still photographs,

which indicates that the closest students to the Guardsmen were on the Taylor Veranda; an iron fence separated these students from the troops, and in any case these students appear to have been no more than passive observers. Other than these civilians, Joe Lewis was the closest student to the troops. The Guard also seems to have had an almost clear path back to the Commons, which was their destination. Thirdly, the contention that the Guardsmen were, when the firing broke out, undergoing a rock barrage is not borne out by the existing photographic evidence. Further, the fact that none was seriously injured by this barrage seems to argue against its existence.

Thus, the evidence suggests that the lives of the troops were not endangered by a mob of students when the former turned and fired. "But," writes Michener, "that is not what is really relevant, for it answers only the question: What would a rational person viewing {the evidence} in a quiet library, long after the event, conclude? The larger question must be: What would a hot, tired Guardsman think if he thought he caught a glimpse of moving students coming at him on his blind right flank?"¹⁵⁷ This is an important point, and it raises a central question in the philosophy of history: can a historian ever really understand the dynamics of any given event, even one as well-documented as the shootings at Kent State? This writer will not attempt to answer that question here, but it does require him to extend his inquiry one step further. Granted, the objective historical evidence does not indicate the existence of a life-threatening mob.

But, for the sake of argument, we will assume that such a mob did in fact exist. We will assume that hundreds of screaming, rock-throwing students were bearing down on the troops from the parking lot area when the latter fired. The question then becomes: how did those troops respond to that mob?

For the mere existence of such a danger is only half of the requirement for justification. The other half concerns the manner in which the Guardsmen dealt with and neutralized that danger; it concerns, in short, procedure. This firing procedure, as outlined in the Rules of Engagement for the Ohio National Guard, has essentially two components: firing must be used only as a last resort, and the shots cannot be indiscriminate; they must be directed towards the impetus of that danger.¹⁵⁸

General Del Corso told the Scranton Commission that "a weapon is only a last resort,"¹⁵⁹ to be used after all other means have been attempted. The Rules of Engagement are explicit:

In any action that you are required to take, use only the minimum force necessary . . . Your use of force should be in the sequence listed below:

- a. Issue a military request to disperse.
 - {1} Insure that an avenue of dispersal is possible.
 - {2} Allow ample time for them to obey the order.
 - {3} Remain in the area for sufficient time to prevent re-assembly.
- b. Riot information--show of force. Instructions in a. {1}, {2}, {3} above apply.
- c. Simple physical force, if feasible.

- d. Rifle butt and bayonet: If people do not respond to request, direction and order, and if simple physical force is not feasible, you have the rifle butt and bayonet which may be used in that order, using only such force as is necessary.
- e. Chemical: If people fail to respond to requests or orders, and riot information and rifle butts or bayonets prove ineffective, chemicals {baseball grenades or jumping grenades} will be used on order when available. When large demands for chemicals are required, a chemical squad will be dispatched to assist you upon request.
- f. Weapons: When all other means have failed or chemicals are not readily available, you are armed with the rifle and have been issued live ammunition. 1160

The troops at Kent State did the first step, the issuance of a military order to disperse, on the Commons. After the earlier dispersal of the Commons crowd and the events on the practice field, it is doubtful that another such announcement would have had much effect on the students. The troops also gave a show of force, especially on the practice field when several Guardsmen knelt and aimed their weapons. But the photographs prove that steps three and four in this sequence of escalating force were not followed; this is particularly significant in light of the fact that bayonets had played a role in the successful dispersal of the crowd at Prentice Gate on Sunday night. Step five was also not employed, for the troops still had several canisters of tear gas left when the firing began; further, at least one high-ranking officer was aware of this fact. The Justice Department's summary of the FBI reports stated that:

Some Guardsmen, including General Canterbury and Major Jones, claim that the Guard did run out of tear gas . . . However, in fact, it had not. Both Captain Srp and Lieutenant Stevenson of G Troop were aware that a limited supply of tear gas remained and Srp had ordered one cannister loaded for use at the crest of Blanket Hill. In addition, SP4 Russell Repp of Company A told a newsman that he alone had eight cannisters of tear gas remaining. This has not been confirmed." 161

At Krause, et al. v. Rhodes, et al., Repp, Stevenson and Srp testified as follows:

SP4 Repp:

Q. How many rounds of gas did you have at the time the shootings commenced?

A. I didn't dispense all of my tear gas. I still had a bandolier . . .

Q. How many grenades did you still have . . . ?

A. There was either four or six.

Q. Was it six or eight?

A. I am not positive. 162

Lieutenant Stevenson:

Q. Were you aware that there was gas remaining?

A. Yes, sir.

Q. How much?

A. I do not recall. It was not very much. 163

Captain Srp:

Q. Was there any tear gas left with G Troop as you left the practice field?

A. Yes.

- Q. Did you have any plans for the use of that tear gas?
- A. I stopped one grenadier from firing a round as we were proceeding up to the Pagoda area. I told him to hold it until we got to the top of the hill. 164

Thus, the firing that occurred at Kent State on May 4, 1970, was not a last resort; in fact, the most important steps in the sequence of escalating force were not employed. The first requirement of the Rules of Engagement was violated; minimum force was not used.

What of the second requirement specified in the Rules of Engagement, the provision forbidding "indiscriminate" fire? That manual states that "indiscriminate firing of weapons is forbidden. Only single aimed shots at confirmed targets will be employed." 165 General Del Corso testified before the Federal Grand Jury in 1974 that this clause prohibits the firing of rounds into the air or the ground as well as prohibiting undirected fire in a horizontal direction. 166 The FBI found that "a minimum of 54 shots were fired by a minimum of 29 Guardsmen . . . Fifteen members of Company A admit they fired, but all claim that they fired either in the air or into the ground . . . Seven members of G Troop admit firing their weapons, but also claim that they did not fire at the students. Five persons interviewed in G Troop . . . admit firing a total of eight shots into the crowd or at a specific student." 167 This was confirmed at Krause, et al. v. Rhodes, et al. SP4 James Pierce testified that he fired three rounds into the air. 168 E5 Lawrence Shafer testified that he fired four rounds into the air. 169

Sergeant Richard Love testified that he fired one round into the air.¹⁷⁰ SP4 James McGee testified that he fired two rounds into the air.¹⁷² PFC Lonnie Hinton testified that he fired one round into the air.¹⁷² SP4 Russell Repp testified that he fired one round into the air.¹⁷³ SP4 Russell Repp testified that he fired one round into the air.¹⁷⁴ SP4 Ralph Zoller testified that he fired one round into the air.¹⁷⁵ PFC Rodney Biddle testified that he fired one round into the air.¹⁷⁶ SP4 William Perkins testified that he fired eight rounds into the air.¹⁷⁷ SP4 Leon Smith testified that he fired one round into the air.¹⁷⁸ Sergeant Okay Flesher testified that he fired three rounds into the air.¹⁷⁹ PFC Larry Mowrer testified that he fired three rounds into the air.¹⁸⁰ SP4 Robert Myers testified that he fired two rounds into the air.¹⁸¹ Sergeant Dennis Breckenridge testified that he fired five rounds into the air.¹⁸² Sergeant Mathew McManus testified that he fired two rounds into the ground.¹⁸³ Thus, at least thirty-nine rounds were fired into the air; if the FBI is correct in estimating a total of 54 shots having been fired, then a majority of those shots were indiscriminate and hence unjustified.

The FBI found that at least five Guardsmen fired a minimum of eight shots either at specific targets or into the crowd. Four of these men were identified in the FBI report: E5 Lawrence Shafer, SP4 James Pierce, SP4 Ralph Zoller, and Sergeant Barry Morris.¹⁸⁴ The fifth Guardsman has never been identified, but at Krause, et al. v. Rhodes, et al., the four who were identified testified as follows:

Lawrence Shafer:

Q. Where did you fire your second shot?

A. I observed an individual coming toward us with his left hand where he was giving us the finger. He had his right hand at his side partially behind him. I fired at this individual because I felt at this point that, not knowing what he had in his right hand, my life was in danger. {Note: the FBI identified this person as Joe Lewis.}

Q. Did you see what happened to that person right after you fired at him?

A. He fell, sir. 185

James Pierce:

Q. How many times did you fire your weapon?

A. I fired four times: one warning shot and four others. The first was the warning shot. The second shot I fired was . . . {at a man} who was standing out of the crowd with his arm drawn back and getting ready to heave another rock or stone.

Q. Did you hit that person with the bullet?

A. I have no idea.

Q. Then you turned your rifle to someone else?

A. Not to a specific individual, just directly in front of me . . . Just at the crowd . . . into the mass, no certain people.

Q. Where was your fourth shot fired? Was that at a particular individual?

A. Yes . . . he was 30, 40 feet away, a large black man . . . he had his arm raised with a rock. 186

Ralph Zoller:

Q. And your second shot?

A. I fired at the legs of a guy throwing a rock at us.

Q. Did you hit him?

A. I don't know.¹⁸⁷

Barry Morris:

Q. You fired two shots?

A. Right.

Q. Where?

A. I fired into the crowd.

Q. When you fired, you did intend to hit someone, didn't you?

A. No particular individual, no.¹⁸⁸

Hence, at least six shots were fired at a horizontal position; of these, three were indiscriminate {into the crowd} and three were directed at specific individuals. Only three shots out of at least forty-five conformed to this requirement of the Rules of Engagement; forty-two did not, and hence were not justified. This conclusion was also reached by Major Jones, who testified at Krause, et al. v. Rhodes, et al.: the shootings were "against the concepts and the procedures that we had trained in . . . The firing was definitely indiscriminate . . . people were indiscriminately firing. Some were firing at trees, in the ground, they were firing all over the place."¹⁸⁹ General Del Corso agreed; he testified before the Federal Grand Jury in 1974 that "the firing was indiscriminate . . . they fired into the air. They fired into the ground. This is dangerous. An M-1 can kill at a range greater than two miles; when you fire a weapon, I don't care whether you fire

into the air or into the ground, that projectile is coming down somewhere. If you fire into the ground, you get a ricochet."¹⁹⁰

This conclusion, that the shots were indiscriminate and not directed towards the impetus of any existing danger to the troops, is reinforced by an examination of the wounds of the students who were shot. The FBI found that, of the thirteen casualties, two were shot from the front, seven from the side and four from the rear; two were hit while lying prone, two while running away; two were wounded twice.¹⁹¹ The Justice Department's Summary of the FBI report stated that none of the four who died "was in a position to pose even a remote danger to the National Guard at the time of the firing."¹⁹² This conclusion was probably based in part on the large distances between the troops and the fatalities.

It was also based on testimony regarding the actions of the students who were wounded. At the time the firing began, Joe Lewis was either standing or walking [according to Robert Johnson's analysis of the Abell film] towards the troops, gesturing with his left hand when he was shot. Sergeant Lawrence Shafer testified at Krause, et al. v. Rhodes, et al., that he shot at Lewis because he thought the latter had a rock in his right hand, though Shafer could not see that rock.¹⁹³ The FBI found that Lewis "had nothing in his hands,"¹⁹⁴ and Lewis himself testified at Krause, et al. v. Rhodes, et al., that he "had nothing in [his] hands."¹⁹⁵

John Cleary was standing facing Taylor Hall, with his side towards the Pagoda, when he was wounded. At U. S. v. Shafer, et al.,

Cleary testified that he was "standing fiddling with {his} camera, advancing the film"¹⁹⁶ when the shooting began. He stressed that he was "standing still, not moving toward the Guard" at that time.

Allen Canfora hid behind a tree at the first sound of firing, yet he was still shot. At Krause, et al. v. Rhodes, et al.,

Canfora testified as follows:

Q. How far from the tree were you at the time you saw this wheeling, turning motion {of the Guardsmen}?

A. I was approximately two steps from the tree, maybe four or five feet. As they turned, I turned and ran to the tree . . . I was eventually shot when I was behind this tree.

Q. Were you facing the Guard?

A. My back was to the Guard.

Q. Immediately prior to the shooting, what were you doing?

A. Watching, following the Guard.¹⁹⁷

Michener is the only published source to detail the activities of the four students who were killed. Jeff Miller, according to Michener, was standing in the parking lot with a friend when the firing began. Michener writes that:

As the Guard neared the top of the hill, Jeff and Dane were standing on the side of the road that separates Taylor Hall from the football field, expecting to see the Guard disappear beyond the Pagoda. Jeff stood facing the rear Guardsmen, while Dane was on an angle, facing Jeff, with his back to Taylor Hall. When the first shots rang out, Dane looked away from Jeff to see what was happening on the hill. "It must be blanks," he said, but as he saw the guns pointed in his direction, he turned back to Jeff. "I was going to say we'd better get out of there, no matter what was in the guns," but by the time he started to speak, Jeff was

already lying in a rapidly expanding pool of blood, for a bullet had caught him full in the face. 198

The FBI concluded that Miller was "killed instantly. He was shot while facing the Guard. The bullet entered his mouth and exited at the base of the posterior skull." 199

Dean Kahler, according to the FBI, was prone on the ground when he was shot. 200 At Krause, et al. v. Rhodes, et al., Kahler testified as follows:

- Q. What were you doing?
- A. I was jogging, trying to catch up with the Guard.
- Q. Dean, what did you do when you heard the first sound of shots?
- A. I said, "Oh, my God, they are firing at us." Then I jumped on the ground and put my hands over my head, in this manner and just hoped I wouldn't get shot.
- Q. . . . can you remember in general the direction your head and your body and your feet were pointing?
- A. Yes, I can remember very distinctly. I was lying in a manner with my head toward the Prentice Hall area and my feet down toward the practice football field . . .
- Q. What part of your body was in contact with the earth?
- A. All of the front of me at this time . . . I remained in that position until I was shot. 201

The activities of Douglas Wrentmore were detailed in Michener's Kent State. That author writes that the sight of the kneeling Guardsmen on the practice field so upset Wrentmore that he decided to separate himself from the whole scene. Michener quotes

Wrentmore as saying:

"With that, I decided that things were getting too dangerous for me. I've never had a gun pointed at me before, so I started to leave, walking toward the parking lot at Prentice Hall." As he left, he was careful to stay free from the main body of students, telling himself, "I'll be a lot safer if I'm not in the middle of a crowd." Consequently, most of the students were to his left closer to Taylor. He also kept looking anxiously over his shoulder, charting the movement of the Guard, who were now retreating up the hill, away from him, and right toward the Pagoda, where he had been standing.

As Doug reached the parking lot, the Guard reached the Pagoda, and he was now more than 300 feet away from them. However, he continued to walk even farther away. Then he heard a noise which he took for firecrackers, and as he turned to investigate, he saw the distant Guardsmen kneeling down as they had done on the football field. {We know that they did not kneel; it only looked that way.} He took two steps back toward the Guard, in order to determine what was going on, but on the third step, his right leg gave away, pitching him onto the ground. 202

At U. S. v. Shafer, et al., Wrentmore testified as follows:

- Q. What were you doing?
- A. I was walking back to my dorm. Then I was going to go to lunch.
- Q. So you were not facing the Guard when the shooting began?
- A. That's right.
- Q. Did you ever turn around?
- A. Yes; at the sound of the shots, I turned to see what was going on. 203

When the first shots rang out, Allison Krause was standing

in the parking lot with her boyfriend, Barry Levine. The FBI reported that "the autopsy report said immediate cause of death was a gunshot wound with massive hemorrhage, and penetration of the left lower lobe of lung, spleen, stomach, duodenum, liver and inferior vena cava, caused by bullet similar to a .30-caliber military ammunition. The bullet had fragmented after penetrating the left upper arm and entering the left lateral chest."²⁰⁴

Michener writes that:

They remained in the parking lot as the Guard neared the Pagoda. Suddenly, they heard shots, and Barry called to Allison, "Get down!" They both knelt behind a car. For at least ten seconds after the firing stopped, Barry congratulated himself that they were safe. Then he heard Allison whisper, "Barry, I'm hit."

He glanced at her, unbelieving. He saw no wound, no blood, "No, no!" he reassured her.

"Barry," she repeated, "I'm hit," and now he saw blood coming from under her arm.

"Ambulance, ambulance!" he began to scream, and after a long time one arrived. ²⁰⁵

James Russell was facing the Guard when a shotgun pellet struck him in the head. At U. S. v. Shafer, et al., Russell testified as follows:

Q. What were you doing as the Guardmen approached the area of the Pagoda?

A. . . . I was giving a pretzel to a friend.

Q. And what did you do when you heard the first sound of shots?

A. . . . I turned to my left to take some kind of cover, and I was struck in the forehead and it was a hammer blow . . . a hole

punctured my head and blood shooting out and covering my eyes. I couldn't see very well. 206

William Schroeder was, according to the FBI, "shot while apparently lying prone on the ground, facing away from the Guard. The bullet entered his left back at the seventh rib, and some fragments exited at the top of his left shoulder." 207 Michener writes that:

While the Guard proceeded to the practice field, Bill went down to the parking lot, where a few minutes later he heard the opening round of gunfire. Instinctively, he hit the ground, face pointed away from the Pagoda and either as he was on the way down or as he lay prone, one of the steel-jacketed bullets entered his back at the seventh rib, continued up past the next two, shattered the fourth rib, deflected inward to penetrate his lung, then exploded outward through the left shoulder. He was thus shot from the rear, from the lower portion of his body toward the upper, and at a great distance from the Guard.

As he lay on the ground, those about him saw the look of agony on his face. When the firing stopped, he was surrounded by a group of students, attempting awkwardly to help him. He asked weakly, "Is an ambulance coming?" and remained conscious for the interminable ten minutes before its arrival. As the medics tried to hoist him on the stretcher, he moved his leg up to help them. At this moment Gene, who had heard that Bill had been shot, rushed up and looked on in anguish. There was nothing he could do, for the young ROTC man was dying. 208

The FBI observed that Sandy Scheuer was "on her way to a speech therapy class" 209 when she was shot. She was "shot through the left front of the neck. Bullet exited on the right front side, severing her jugular vein." 210 Michener writes that Scheuer was walking with a friend, Ellias Bernes, when the firing began:

As they left the area, they heard a noise behind them, and half-turned to see what was happening. This meant that they were facing right into the volley of shots coming from the hill. Ellis grabbed Sandy, intending to run toward a car, but instead the two hit the ground, with Ellis' arm around her waist. They lay there for a moment until the firing ended. Then Ellis turned to Sandy and said, "Let's go." She made no movement, and he looked again and saw that she had been hit somewhere in the neck, and that the pavement was being stained with her blood. 211

Robert Stamps had his back to the Guard when he was shot.

At Krause, et al. v. Rhodes, et al., Stamps testified as follows:

Q. . . . what did you do?

A. I exited the front of Prentice Hall and was going in the direction of my dormitory . . . when I heard the first shots.

Q. Were you doing anything in particular at that time?

A. I was watching various things, talking to a friend of mine . . . As soon as I heard the sound of gunfire, I turned around and ran as fast as I could.

Q. Where was your back in relation to the Guard at the time you were shot?

A. My back was directly to the National Guard. 212

Donald MacKenzie, according to the FBI, was shot "running in the opposite direction from the Guard." 213 At Krause, et al. v. Rhodes, et al., MacKenzie testified as follows:

Q. What, if anything, were you doing {at the time you were shot}?

A. I was watching--oh, at the time I was hit, I was running away.

Q. What did you do when you first heard the sound of gunfire?

A. I turned and ran.²¹⁴

From the testimony of both students and Guardsmen, from the locations of the wounds on students who were shot and from the large distances between troops and casualties, one must conclude that the shootings were indeed indiscriminate. The second requirement of the Rules of Engagement was violated; even if danger from a mob existed, the bullets were not directed toward the impetus of that danger. The firing was not only not a last resort, but it was also undirected. Thus, the Rules of Engagement were not adhered to in any manner of speaking.

CONCLUSIONS

First, the historical evidence indicates that no life-threatening mob of rock-throwing civilians was in the vicinity of the troops on Blanket Hill when the latter opened fire on May 4, 1970. Second, even if the Guardsmen believed that such a mob existed, the troops ignored their own Rules of Engagement in dealing with that danger. The use of deadly force was not used only as a last resort as is required; several lesser means of crowd dispersal and self-defense were not even attempted by the Guardsmen prior to their use of lethal force. The firing was as well indiscriminate; the thirteen students who were shot, four fatally, were in no way endangering the lives of the Guardsmen at the time of the shooting. Even if the lives of the troops were imperiled, they did not shoot in such a way as to eliminate that danger, while taking reasonable precautions against innocent bloodshed.

These conclusions were arrived at by several investigators into the shootings at Kent State. Those investigators and researchers have already been cited in the Introduction of this paper, with one exception: Major General Sylvester Del Corso. As Adjutant General of the Ohio National Guard in 1970, Del Corso was the highest ranking Guard officer of that state; as such, the actions of the troops in Kent were his direct responsibility. On February 26, 1974, Del Corso testified before the Federal Grand Jury as follows:

Q. Do you think the National Guard was justified in shooting?

A. I would definitely say "no" . . . I say it was unjustifiable because, as I see it I can't see how it can be justified . . . I can't see any justification for it . . . I certainly am not going to say this was a justifiable shooting. I don't believe in such a thing as a justifiable shooting in a civil disturbance unless it is a situation that a man's life is definitely at stake . . . I won't justify anyone aiming at a student to shoot unless that student was about to overrun him, overpower him . . .

Q. With the distance that the students were at, the closest one which . . . was 60 feet and the other was 700 feet away, do you think they were justified in aiming at the students?

A. No, I don't think they were at all. Because certainly someone a hundred feet or even 200 feet away, I don't think creates a danger to the man's life unless he has a gun . . . But certainly anyone that far away, there is no justification to shoot.

Q. Granted that these are selected photographs and you were relying to a large extent on my representations to you that they were taken at the time of the shooting, they

cover, would you not agree, a large amount of area around the Guard at that time, don't they?

A. Yes.

Q. Does the Guard appear to be surrounded at all in those pictures?

A. No, they are not.

Q. Do you know that apparently there were at least in excess of 16 rounds of tear gas left?

A. I was aware that there was some tear gas left. I don't know the number of rounds.

Q. Was {the firing indiscriminate}?

A. The firing was indiscriminate . . . they fired into the air. They fired into the ground . . . An M-1 can kill at a range greater than two miles; when you fire a weapon, I don't care whether you fire into the air or into the ground, that projectile is coming down somewhere. If you fire into the ground, you get a ricochet . . . This is dangerous. 215

PART THREE

WAS THERE A SNIPER?

We do know that there
was a sniper and that
he was firing at the
National Guard when they
turned and returned the
fire.

Alan Stang
American Opinion

There was no sniper.

Peter Davies
The Truth About
Kent State

The existence of a life-threatening riotous situation is only one of two conditions sufficient to justify the firing of weapons in a civil disturbance. The other condition in which shooting may be justifiable is explained by the Rules of Engagement thusly:
" . . . snipers will be fired upon."¹ Guardsmen, when they receive fire, may return that fire.

This section of my paper is organized much as was the previous section. First, there will be a review of all relevant eyewitness testimony. Second, there will be an examination of an audio tape recording of the shooting which was made by a Kent State student. Third, there will be a discussion of several facets of this question of the presence or absence of a sniper; these various aspects of the shooting are too complex to discuss here. Finally, there will be a discussion of the manner in which the Guardsmen fired; in other words, a further analysis of proper shooting procedure and whether that procedure was followed on May 4, 1970.

Several eyewitnesses assert that the first shot fired on May 4, 1970, was from a low caliber weapon. The truth of this would not in itself prove the existence of a sniper at Kent State, because it is possible that a Guardsman could have fired the first shot with a .22 or .38. But this is unlikely, because the only Guardsman known to have been armed with a low caliber weapon on that day was Major Harry Jones. Jones testified at Krause, et al. v. Rhodes, et al., that he never fired his weapon at Kent State.² Further, it is obvious from the photographic evidence discussed earlier that Jones did everything in his power to stop the shooting; when the shots rang out, he was standing near the Pagoda with both

hands on his hips.³ Finally, no witnesses to the event testified that they saw Jones discharge his weapon. Thus, if the first shot fired at Kent State was indeed low caliber, there is at least a fair chance that it was fired by a sniper. And as in the previous section of this paper, the testimony is diverse.

General Canterbury, at his press conference the day after the shooting, stated that "there is every possibility that the troops were shot at . . . I did hear a single shot preceding the Guard volley."⁴ In 1974, before the Federal Grand Jury, Canterbury testified that the first shot "sounded like a .30 caliber . . . rifle round."⁵ The Guardsmen at Kent State were equipped with .30 caliber, M-1 rifles. Yet at Krause, et al. v. Rhodes, et al., one year after he testified before the Federal Grand Jury, Canterbury said that the first shot "sounded like a lighter caliber weapon."⁶ He also testified that the troops were "never able to locate and confirm"⁷ the existence of a sniper.

Major Harry Jones testified at Krause, et al. v. Rhodes, et al., as follows:

- Q. You remember hearing a noise or report or something, go ahead and describe what you heard . . .
- A. I heard the first explosion, I am looking to my left toward Johnson Hall. The first thing that comes to my mind was: Who would be so stupid to set off an explosion or something of this nature in such an intense situation.
- Q. Did it sound like a .22 caliber shot . . . ?
- A. No.

Q. Something larger than a .22, perhaps a .38 or .32 caliber bullet?

A. It sounded like neither one of those.

Q. Did not? What did it sound like?

A. It sounded more like a firecracker or something of that nature.

Q. What [did you then hear]?

A. A gunshot.

Q. How would you describe it?

A. A weapon fired. The zing of a projectile going through the air, it makes a definite zing.

Q. What happened after the second shot?

A. . . . The National Guard troops turned almost simultaneously and the shots started.

Q. Was there any time lapse between the first sound, the first report, explosion and the second one?

A. There must have been a couple, three seconds.

Q. When you heard either the first or second explosion, did you see any Guardsman that had his rifle at that time pointing at anybody?

A. The Guard had not turned, they had not turned around yet. B

Captain John Martin testified at Krause, et al. v. Rhodes, et al., as follows:

Q. Tell us what you heard just prior to the firing?

A. Just prior to the firing, a matter of a second or seconds, I heard what I, at that

particular time, thought was the sound of two low caliber bullets or rather two low caliber shots.

Q. Then what did you hear, sir?

A. Well, immediately after that I heard the obvious sound of M-1 rifles being fired.

Second Lieutenant Howard Fallon told the FBI that he heard two low caliber reports before the Guardsmen opened fire. The Justice Department's summary of the FBI report stated that "Lt. Fallon specifically claims that the shots came from the parking lot south of Prentice Hall . . . Kline claims that he . . . saw the {small caliber} shots hitting the ground in front of {him} . . . As part of {our} investigation, a metal detector was used in the general area where Lieutenant Fallon . . . indicated {he} saw bullets hit the ground. A .45 bullet was recovered, but . . . there is nothing to indicate it had been fired by other than a Guardsman." 10

At Krause, et al. v. Rhodes, et al., Fallon testified as follows:

Q. Now, when you got to the top of the hill, did you hear a discharge of some kind--a sound, let's say a sound of some kind?

A. The report of small arms fire, two to three distinct shots, prior to the shooting of the National Guard . . . the topography and {the structure of the buildings in the Pagoda area} made it difficult to discern where they came from.

Q. Now, why do you say they were small arm rounds?

A. Well, in my experience in the military and as a police officer I have heard numerous gunshots and I am well familiar with the

general sounds of types of weapons, and they were not the report of high-velocity weapons or of a weapon as high power as a .45.

Q. Well, let me be specific: were they sounds from an M-1 rifle or a .45?

A. No, sir.

Q. Were they sounds like you would hear from a .22 or a .38?

A. They could have been anywhere from the .25 to the .38 caliber weapon. You get an associative pop rather than a loud report. It depends on the weapon and the noise it makes is very distinctive . . . And then there was a volley of shots that followed that. 11

Sergeant Barry Morris was quoted in the Justice Department's summary as telling the FBI that he "believes {the first shot} came from a sniper."¹² For some unexplained reason, Morris was not questioned about this at any of the Kent State-related trials.

PFC James Brown testified at Krause, et al. v. Rhodes, et al., as follows:

Q. What did you do next?

A. Next I heard the first shot fired, a single shot.

Q. Yes?

A. And to me it sounded like a small caliber shot. 13

SP4 Russell Repp was quoted in the Justice Department's summary as telling the FBI that he "heard what {he} thought was small arms fire from the Johnson-Lake Hall area."¹⁴ Repp testified at Krause, et al. v. Rhodes, et al., as follows:

Q. As you moved in this general direction from the fenced-in area on the practice field and moved up to the area of the Pagoda area here, would you describe what you observed and what you heard?

A. Okay. When I got to this point, I heard three shots from a small arms weapon or a .22 rifle at a long distance because the sound of it definitely wasn't a larger arms weapon, it was a small arms weapon . . . I heard the shots prior to any Guards' . . . 15

SP4 Ralph Zoller was quoted in the Justice Department's summary as telling the FBI that he "claims he heard a muffled shot which he alleges came from a sniper. Thereafter he heard the National Guard shoot . . ."¹⁶ At Krause, et al. v. Rhodes, et al., Zoller testified as follows:

Q. Why did you turn around?

A. I heard a single shot, sir.

Q. Then when you heard that shot, was it followed almost immediately by a whole barrage of shots?

A. No, sir, not right away.

Q. How much time elapsed?

A. A few seconds.

Q. Where did that shot come from? What direction?

A. Sounded like it came from my rear.

Q. Close by?

A. No, sir.

Q. You couldn't really tell?

A. It didn't seem real close, because it didn't seem that loud, sir.

Q. It seemed like something that would make a softer or lower volume of sound than a regular .45 caliber pistol or an M-1 rifle?

A. Yes, sir.

Q. Have you ever heard a .22 Baretta fire or a .22 caliber weapon?

A. Yes, sir.

Q. Sounded something like that?

A. It didn't seem to be a high, powerful burst, you know. It seemed like it was lower caliber maybe.

Q. This was a rather startling thing that was happening at that moment, wasn't it?

A. Yes, sir. I thought we were being fired upon. 17

Ohio Highway Patrolman Arthur Reedy was located at the intersection of Summit Street and Rhodes Road, approximately 3,500 feet from the Pagoda, when the firing began. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. What . . . did you hear . . . ?

A. Yes, sir. When I exited my car and started walking toward the other patrolmen, I heard what appeared to be a shot, a noise I normally associated with a low caliber weapon.

I then heard two or three other shots, a noise which I normally associate with a high caliber weapon, and then I heard a large volley of shots, also which I normally associate with large caliber weapons.

Q. And generally, did all of the shots that you heard come from the same general direction?

A. Yes, sir.

Q. And what direction was that?

A. In the direction of Taylor Hall and the Commons.

Q. How long a period of time elapsed between the first shot that sounded like a low caliber, and the other shots that sounded like high caliber?

A. It seemed like seconds, to me.

Q. All right. And when you say the first shot sounded like a low caliber weapon, can you give us a better expression of opinion as to what caliber that was, in your opinion?

A. It was the sound that I normally associate with a .22.

Q. And what has been your experience in listening and shooting a .22 caliber weapon?

A. I have had a .22, been out with people shooting .22's, since I was 14 years old, back in Youngstown; fired .22 in competition in the Army. 18

Major John Simons was located in the area of the Victory Bell when the shooting commenced. At Krause, et al. v. Rhodes, et al., he testified as follows:

Q. Are you familiar with the sound of the discharge of an M-1 rifle?

A. Very familiar.

Q. Could you tell what type of weapon {fired the first shot}?

A. I could tell it was an M-1.

Q. Did you observe any separate sounds, separate and apart from the initial firing that you have described as M-1 fire?

A. No, sir. 19

Captain Ronald Snyder testified at Krause, et al. v. Rhodes, et al. as follows:

Q. Now, at the time of the shooting, do you remember hearing the sounds of the first shots as they sounded off to you?

A. Yes.

Q. Is it a fact that they sounded to you like they were .30 caliber or .45 caliber handgun shots? [Note: M-1 rifles are .30 caliber weapons.]

A. Yes.²⁰

Lieutenant Alexander Stevenson testified at Krause, et al. v. Rhodes, et al. as follows:

Q. And you had no reason to believe that there was any kind of sniper around, at that time, did you?

A. There was something on a roof, I believe. Later, someone said it was a camera.

Q. I am talking about the time that you were walking up there, at that time you had no knowledge or evidence that there might be a sniper there, isn't that correct?

A. Correct.

Q. Now, when you first heard the sound of gunfire, was it a single shot or was it a separate shot or shots of some kind followed by a barrage? How would you describe it?

A. As best as I can remember, it all happened very rapidly and it is hard for me to say if there was a distinction between the first shot and what followed after that. ²¹

SP4 William Hershler testified at Kruase, et al. v. Rhodes, et al. as follows:

Q. Is it a fact that the sound of the first shot and shots all came from your right?

A. Yes, sir.

Q. Since they came from your right, would that be approximately in the area where there were other troops?

A. Yes, sir.

Q. Was there anything that distinguished the sound of the shots, one from the other, one being louder than the other, so far as you were able to discern?

A. Not to me.²²

SP4 James Pierce was quoted by the Justice Department as telling the FBI that the first shot came "from the National Guard."²³

At Krause, et al. v. Rhodes, et al., Pierce testified as follows:

Q. Did any shots come from anywhere besides the Guard lines?

A. Not that I could tell.

Q. Did all of the shots sound alike in terms of loudness or softness or anything else?

A. They did to me.²⁴

SP4 Leon Smith testified at Kruase, et al. v. Rhodes, et al., as follows:

Q. From what direction did the first shot come from?

A. I felt it came from this area up into my front right . . . almost a split second after I heard that, there was a like a complete, as has been said before, a complete volley, several shots.

Q. Now, you are familiar, are you not, with the sound of an M-1 rifle when it is discharged?

A. Yes, I am.

Q. And you are familiar with the sound of a .45 caliber pistol when it is discharged?

A. Yes, I am.

Q. That is based upon a number of years of experience with those sounds in practice and so forth, is that correct?

A. Yes.

Q. Could you tell me within the best of your knowledge and familiarity, whether or not that first shot that you heard appeared to be either one of those discharges, a .45 or an M-1?

A. The sound that I heard could have sounded like an M-1 or a .45. 25

SP4 Robert Myers testified at Krause, et al. v. Rhodes, et al., as follows:

Q. Now, would I be correct to say that you never heard any initial shot or initial zing or firecracker sound or any kind of initial sound prior to hearing a barrage of weapons? Isn't that right?

A. Yes, sir.

Q. You heard no such sound before the Guardsmen fired?

A. No. 26

Private Lonnie Hinton testified at Krause, et al. v. Rhodes, et al., as follows:

Q. Did you hear any shots coming from in front of you, sir, like over here in this area of Johnson Hall, the very first instant you became conscious of any sound of shots?

A. I didn't notice any, no.

Q. All of the shots came from the Guard ranks?

A. So far as I know.²⁷

All nine students who were wounded testified that the first shot came from the troops. Joe Lewis was standing in front of the metal sculpture, 20 yards from the troops, when he was shot. Lewis testified at U. S. v. Shafer, et al., as follows:

Q. Describe the sound of the shots for us, if you would.

A. I heard a volley of shots. I couldn't distinctly hear single shots.

Q. Where did these shots appear to be coming from?

A. From the crest of the hill where the Guard was standing.

Q. Did you hear any shots coming from any other direction?

A. No, I didn't.²⁸

John Cleary was 37 yards away from the troops when he was wounded. Cleary testified at U. S. v. Shafer, et al., as follows:

Q. Would you describe the shooting that you heard?

A. Yes. They turned and it was a sort of scattered shooting.

Q. Where was all the firing you heard coming from?

A. Directly between the Pagoda and Taylor Hall
.

Q. Did you hear or observe firing from any other direction?

A. No, I didn't.²⁹

Thomas Grace was 66 yards away from the Guardsmen when he was hit. Grace testified at U. S. v. Shafer, et al., as follows:

Q. Where did all of the shooting that you heard sound like it was coming from to you?

A. From an area around the Pagoda, at the apex of Taylor Hall. 30

Alan Canfora was 75 yards from the Pagoda area when he was shot. Canfora testified at U. S. v. Shafer, et al., as follows:

Q. Mr. Canfora, where did all the shooting you heard appear to come from?

A. From the top of the hill.

Q. Would you show us on a map, please?

A. Yes. From this area here. From the small group of Guardsmen who turned and fired. 31

Dean Kahler was 100 yards from the Guardsmen when he was wounded. Kahler testified at U. S. v. Shafer, et al., as follows:

Q. Where was that gunfire coming from?

A. The area between the Pagoda and the Taylor Hall balcony.

Q. Did you hear firing from any other area?

A. No, I didn't. 32

Douglas Wrentmore was 100 yards from the troops when he was hit. Wrentmore testified at U. S. v. Shafer, et al., as follows:

Q. Did you hear any shot before the sound that you have described?

A. No, I didn't.

Q. Could you tell what direction the shot appeared to come from?

A. Well, I guess it appeared to me to come from the area of Taylor Hall, because that's where I turned to see what was happening.

Q. Did all of the sounds appear to be coming from the same location?

A. Yes, they did to me.

Q. And what location was that?

A. Right around the shelter of Taylor Hall.³³

James Russell was 130 yards from the Pagoda area when he was shot. Russell testified at U. S. v. Shafer, et al., as follows:

Q. Where did all of the shooting appear to come from?

A. From the Pagoda area, where the National Guard was.³⁴

Robert Stamps was 165 yards from the troops when he was wounded. Stamps testified at U. S. v. Shafer, et al., as follows:

Q. Did the shots all appear to come from the same direction?

A. Yes.

Q. Where did they appear to you to be coming from?

A. . . . from close to Taylor Hall.

Q. When you heard the shots, did you hear one shot and then a series of shots or were they all together?

A. I thought I heard one shot, then a couple, then a series. But they were all in very short succession.³⁵

Donald MacKenzie was 250 yards from the Guardsmen when he was shot. MacKenzie testified at U. S. v. Shafer, et al., as follows:

Q. Did you see or hear the sound of gunfire?

A. When they got to the top of the hill, the Guard farthest to the right . . . turned and fired.

Q. Prior to that man on the right turning and firing, had you heard any other gunfire?

A. No.

Q. Where did the first gunfire you heard come from?

A. From that man who turned and shot.

Q. Where did you hear all of the gunfire coming from?

A. That same area where the Guard was standing.

Q. Did you hear any gunfire coming from any other area?

A. No, I did not.³⁶

Student Howard Ruffner, a photographer for the Chestnut Burr, was located near the metal sculpture when the shooting commenced. At Krause, et al. v. Rhodes, et al., Ruffner testified as follows:

Q. What kind of sound did you hear at the time of this photograph {Note: this refers to Photograph 23 in the album attachment to this paper}?

A. I heard rifle fire at this point in time.

Q. Where was that rifle fire coming from?

A. From the area between the Pagoda and Taylor Hall.

Q. Was it coming from any other area?

A. Not to my knowledge; no.³⁷

Student Ronald McNees, a photographer for the Daily Kent

Stater, was behind and to the left of the Guardsmen when the firing commenced. At U. S. v. Shafer, et al., McNees testified as follows:

Q. From what direction did you hear the shots?

A. From the direction of the shelter.

Q. Did you hear any gunfire from any other area, specifically from the area of the gymnasium or Lake Hall or anywhere behind you?

A. No.³³

Student Gregory Moore was located on the Taylor Hall veranda when the first shots rang out. At U. S. v. Shafer, et al., he testified as follows:

Q. Would you describe for us the sound of the shooting as you recall it?

A. The sound was rifle fire.

Q. Could you give us an idea if there was any initial volley of rifle fire?

A. Just the sound of rifle fire. Toward the end of that rifle fire there were a few trailing shots.

Q. Where did this gunfire appear to be coming from?

A. It appeared to be coming from the direction of the National Guard.

Q. Did you hear any gunfire that appeared to be coming from any other direction?

A. No, I did not.³⁹

Student Paul Tople was also located on the veranda of Taylor Hall when the firing began. At U. S. v. Shafer, et al., Tople testified as follows:

Q. Where did all of the shots appear to you to be coming from?

A. From the line of Guardsmen.

Q. Did you hear any gunshots from any other area?

A. No.⁴⁰

Student Rae Stiegemier was standing near the fifth pillar from the corner on the Taylor Hall veranda when the shooting commenced. At Krause, et al. v. Rhodes, et al., she testified as follows:

Q. Miss Stiegemier, at the time that the shooting occurred, did you hear any shots coming from any place other than the National Guard line?

A. No, I didn't.⁴¹

Student John Darnell was located on the veranda of Taylor Hall when the shooting began. He testified at U. S. v. Shafer, et al., as follows:

Q. Where did all of the shots sound like they were coming from?

A. From the Guardsmen.

Q. Did you hear any shots from any other direction?

A. No.⁴²

Student David Eabs was standing on the Taylor veranda when the firing commenced. At U. S. v. Shafer, et al., he testified as follows:

Q. What {happened} then?

A. As I was watching, the gunfire occurred.

Q. Where did it sound like it was coming?

- A. From the corner of {Taylor Hall}.
- Q. Which corner of the building?
- A. The corner where the Guard was then located between the Pagoda or shelter and the corner.
- Q. Did you hear any firing coming from any other area?
- A. No, sir.⁴³

Student Stephen Schweler was located on the Taylor veranda when the shooting began. Schweler testified at U. S. v. Shafer, et al., as follows:

- Q. Where did all of the firing you heard come from?
- A. It came from this corner of Taylor Hall between the {Pagoda} and the railing {indicating}.
- Q. Did you hear or see firing from any area {other than that}?
- A. No, sir, I did not.⁴⁴

Student Tim Nightswander was between Taylor and Johnson Halls when the firing commenced. At U. S. v. Shafer, et al., Nightswander testified as follows:

- Q. The firing that you heard, from what direction did it come?
- A. It came from the top of the hill.
- Q. Did you hear firing from any other area?
- A. No, sir.⁴⁵

Professor Michael Glasser was standing on the veranda of Taylor Hall when the first shots rang out. Glasser testified as follows:

Q. What made you aware of the firing, if you can recall?

A. The sound of the firing.

Q. Where did the sound come from?

A. From where the Guardsmen were.

Q. Could you hear any sound similar to gunfire prior to hearing the sound come from that area you have just indicated?

A. No, I did not.⁴⁶

Alfred Douglas Moore, a Kent State University photographer, was located behind the metal sculpture when the firing began. At U. S. v. Shafer, et al., Moore testified as follows:

Q. Did you hear any single shots prior to this cluster of shots?

A. No, I did not.⁴⁷

Paul Locher, a reporter for the Ashland City Press, was located on the sidewalk in front of Taylor Hall, near the spot where Jeff Miller was fatally shot (approximately 265 feet from the troops). At Krause, et al. v. Rhodes, et al., Locher testified as follows:

Q. When the sound of the shots rang out, did they all come from the area of the Pagoda, the upper end of Taylor Hall, in that area?

A. Yes.⁴⁸

Donald Raese, a photographer for the Akron Beacon-Journal, was approximately 90 feet to the left of the Guard when the latter turned and fired. Raese testified at U. S. v. Shafer, et al., as follows:

Q. Will you tell me where the gunfire appeared to be coming from when you heard it?

A. From my right. It seemed to be toward the Taylor Hall line, into the National Guardsmen.

Q. Did you hear any firing from any other area?

A. No, sir, I did not.⁴⁹

The above testimony is less unwieldly than that presented in the previous section of this paper, but it is equally inconclusive. One Guard Major states that the first shot was fired from a .22, while a Captain and another Major claim that the initial round came from an M-1 rifle. One Lieutenant testifies that the first gunshot was low caliber and a second Lieutenant asserts the opposite. All civilian witnesses testify that the first round was fired from the area of the troops. The bulk of the testimony argues against the existence of a sniper, but this evidence is still not particularly conclusive. The question still remains: what did these people actually hear, and what was the source of that sound?

Once again, mechanical devices may be employed to supplement human testimony. Terry Strubbe, a Kent State University student, recorded the sounds of the shots on tape. Strubbe had mounted his machine, a Sharp Model DDV-3, on the window sill of his dormitory room in 110 Johnson Hall. The United States Department of Justice, in preparation for U. S. v. Shafer, et al., contracted the acoustical engineering firm of Bolt, Beranek and Newman, to analyze the Strubbe tape. Scott Robinson, an engineer specializing in acoustics and electronics, actually conducted the analysis.

Robinson is a 1965 graduate of Harvard University with a

bachelor of arts degree in engineering and applied physics. After a year of graduate work at Harvard, Robinson came under the employ of Bolt, Beranek and Newman.

At Krause, et al. v. Rhodes, et al., Robinson testified as follows:

- Q. What was the purpose of using those pieces of equipment?
- A. The purpose was to enable us to understand, interpret the sounds on this tape and to compare them with certain test sounds which we also recorded so as to come to some understanding and conclusions about the events recorded on the tape.
- Q. Now, what are you talking about when you talk about test sounds?
- A. There were two sets of test sounds that were recorded. In one case some sounds of weapons which were known to be, or from the records said to be in the possession of the Guardsmen, were made at Aberdeen Proving Grounds in Maryland, so that we would have sounds of those weapons recorded under known conditions to compare with the sounds on this tape.
- Q. Do you mean that weapons, various types of guns were fired there?
- A. Yes.
- Q. Deliberately as part of this testing process?
- A. Yes. They were fired and the sounds they made were recorded.
- Q. Recorded on what, sir?
- A. Recorded on high quality tape recording equipment.
- Q. What was the purpose of this?

I am going to lead, if there is no objection?

Was it for comparison to the sound you were listening to on the Strubbe tape?

A. Yes.

Q. The purpose of that, was it to ascertain the nature of the sound and the nature of the guns that had made sounds on the Strubbe tape?

A. Yes.

Q. All right.

Sir, in addition to doing--withdrawn.

In addition to test firings of known weapons, did you also go to Kent State University in connection with this project?

A. Yes.

Q. Was that all at the expense and the charges of the Government, the Justice Department?

A. Yes.

Q. Were you actually participating in all of these proceedings?

A. Yes.

Q. Sir, what guns were test fired to determine the known sound of known weapons?

A. We test fired an M-1, a .45 caliber automatic, 12 gauge shotgun and a grenade launcher.

Q. Were you present when these were made?

A. Yes.

Q. And were they recorded on tape recordings?

A. Yes.

Q. Were those sounds actually compared with the sounds on the Strubbe tape?

A. Yes.

Q. All right, sir.

Now, are the various entries, and I don't want you to go into detail at this moment, I notice we have various points and numbers and inscriptions there, would you tell us in general what they are?

A. The numbered points are the locations from which we made test firings. They are numbered 1 through 14.

Q. Go ahead.

A. At each position we fired three different types of shot, we had an M-1 rifle which was fired with blank ammunition for public safety, both into the air and parallel to the ground.

We also fired 10-gauge shotgun shells in a small saluting cannon which we used for this purpose.

So at each location three different types of shot were fired.

Q. Now, sir, in addition to doing what you have told us you did, was there anything else of consequence that you would tell us about in relation to what this project consisted of?

A. Yes. There are two basic kinds of analysis we did to try to understand the events on the tape. Both of them are fundamentally comparisons.

The first I have described somewhat sketchily. We recorded the sounds of known weapons or rather recording was furnished to us by the Justice people, that are sounds of known weapons.

We then proceeded to compare these sounds to the sounds on this tape, to try to understand which shots were fired by what kind of weapon.

The other type test--I can go into more detail if it seems appropriate.

Q. Go ahead.

A. This is done--at this point I have to give, I guess, a small lecture.

Any sound can be analyzed, broken down, if you will, into different frequencies, different pitches, musical pitches, and you can draw a graph that has pitch going along this way and loudness that way. {Indicating}. And a given sound will have some characteristic shape graph that goes with it.

Each gun, each weapon fired, will have this characteristic, what is called a spectrum. It will have a characteristic sound spectrum and we were able to make comparisons between the weapon sample test firings and the shots on this tape, in order to establish which shots were fired by what type of weapon, by the frequency content called "spectrum".

Q. Now, sir, was one of your objectives in this project to ascertain where the first or the second or the third shot came from?

A. Yes.

Q. And was that ascertained as part of this project?

A. Yes.

Q. What did you do to determine that?

A. In order to establish where the shots came from, we made use of another comparison, this time comparison with the test firings which I described a minute or two ago made at the original site at Kent State University, the kind of comparison was a little different.

In this case--now, may I stand up and point at the map?

Q. Sure. Would you kindly use this pointer?

- A. Yes. We made test firings from a number of locations, totaling 14, along--location 1 through 5 are along a line from the corner of Taylor Hall to the corner of the shelter.

Location 6 is somewhat in front of the Guardsmen.

Location 7 through 10 are in a curve running like this--{indicating}--7, 8, 9, 10.

These are locations which were chosen to simulate as closely as possible from the photographs provided to us the position of the persons along the actual line of Guardsmen at the time of the firing.

We also fired from in the parking area, here, here, here and here, those are locations 11 through 14, in order to be able to address the question of possible small arms fire from this area {indicating}.

- Q. Possible small arms fire from that area?
- A. Yes. We were asked to investigate that.
- Q. All right. And, sir, were you told the approximate location of the tape recorder, itself, as it was running and recording, the Strubbe tape recorder?
- A. Yes.
- Q. What were you told as to that?
- A. We were told that the recorder and its microphone were in the window of Mr. Strubbe's room in Johnson Hall.
- Q. And were you told on what side of Johnson Hall that was?
- A. Yes. The back side of Johnson Hall; I don't have the exact coordinates. It would be about there {indicating}.
- Q. All right. And it was on a window ledge facing in that direction, is that right, sir?

A. Yes.

Q. Was there any consideration given to the distance away from the firing of the weapons, the distance between where the weapons were fired and the position of the tape recorder and that position in the window of Johnson Hall?

A. Yes.

Q. Now, how was that considered and what was done to take that into consideration as a factor in your analysis?

A. Well, the way we performed this analysis was to compare--can I give a short talk?

Q. Surely. Please do that.

A. Okay. Let me describe the way it is done. If you make a noise, say you make a noise, fire a gun here--well, let me pick a place over here; it's easier to illustrate--make a noise here, some sound will travel directly over the roof of the building and down the side to Mr. Strubbe's window. Some sound will also go over, bounce off of the VW, Volkswagen microbus parked there, large black sided vehicle which you may remember. Sounds will bounce from there, bounce from here, and a variety of places, so you will get, if you break down the sound received and spread it out in time, you will get a bang and another bang which may be smaller, of course. You will get several echoes arriving and from the exact time history of those, you know, how loud and when the various echoes . . .

Q. Now, what do you mean by time history?

A. If I draw a graph {marking}--for time, it goes this way. Loudness goes that way {marking}.

And say at this point here we received the first sound, the first, say the direct path in this case, over the roof of the building and then another reflection and perhaps two more reflections--I am illustrating a random sequence, this isn't any

particular location, this is a characteristic thing.

Q. Now, sir, based upon these various tests, did you come to any findings as to the direction or the location, I should say the location of the first shot as was recorded on the Strubbe tape?

A. Yes.

Q. What was that finding?

A. Let me refresh myself from my notes. {Produces and examines.}

The first shot came from near location number 3.

MR. KELNER: Now, may the record indicate, sir, that he has now placed the pointer at a point approximately equal distance from the shelter and the southwest corner of Taylor Hall?

Q. Sir, did you ascertain or make a finding upon the basis of the comparison shootings that you have told us about, as to what kind of weapon fired the first shot that you have just given us the location for?

A. It is my opinion that it was an M-1 rifle.

Q. And what was the basis of that, sir?

A. The basis of that was comparison of the sound of the first shot on Mr. Strubbe's tape with the test sound of an M-1 done for us at Aberdeen.

Q. And were M-1 rifles also fired as part of the comparison testing program at Kent State University?

A. Yes.

Q. Was that also considered in reaching your conclusion?

A. The firings we did on the site were for purposes of locating the source and not

for the purposes of establishing the weapon nature.

Q. All right. Now, sir, in arriving at that finding, did you consider the position of the tape recorder and the distance in relation to the instrumentation that you were using, the instruments and the machines?

A. Yes.

Q. How much time was there between the first and second shots?

A. Let's see. 0.33 seconds.

Q. And, sir, when was the third shot in relation to the second shot?

A. 0.39 seconds after the second.

Q. So that the first, second and third shots all were within less than one second?

A. The time from the first shot to the third is less than a second, yes.

Q. I see. Was there any other shot that was recorded on the Strubbe tape before what you have told us was the first shot?

A. There is none audible on the tape.

Q. Now, sir, how much time did the tape run before the sound of the first shot was recorded on the tape?

A. At least ten minutes.

Q. Are there sounds, crowd noises, yellings?

A. Yes. Ringing of bells, yes.

Q. Ringing of bells?

A. Yes. There is a bell, I believe, down where it says "bell" there, and that was being rung during this time.

Q. Are you pointing down to the Victory Bell?

A. {indicating}

Q. Yes. That sound of that bell ringing within 10 minutes before the sounds of the shots?

A. Yes.

Q. And the sounds of human voices?

A. Yes.

Q. Was there any interruption whatsoever on the continuity of that tape as it ran for 10 minutes, that you could detect?

A. No.

Q. Was there any splicing or breaking of that film in the 10 minutes it ran from the time of its beginning up to the time of the first shot?

A. No.

Q. By the way, how long did the entire shooting sequence run from the first shot to the last?

A. I believe it was 12.53 seconds.⁵⁰

Thus, it appears that the answer to this section of my paper is "no". The Strubbe tape ran continually for 10 minutes before the first shot was fired; that machine was sensitive enough to pick up the ringing of the Victory Bell on the Commons, so it surely would have recorded the sound of a shot fired in the vicinity of the Prentice Hall parking lot. It is unlikely that a sniper would have possessed an M-1 rifle, and even if one did it is unlikely that he fired the initial shot. There was an interval of only .33 seconds between the first two shots and this minute amount of time would not have been sufficient for the troops to react to the initial sniper round, turn 135 degrees and fire the second shot. Mr. Robinson's conclusions were clear. First, the

initial shot was fired by an M-1. Second, that shot was fired from the location of the National Guardsmen.

This does not, however, end my inquiry. Six aspects of the question at hand must be examined. The first concerns an object, that some witnesses thought was a rifle, located on the roof of either Johnson or Taylor Hall. The second involves Donald Mac Kenzie's wound, which at least one medical doctor states was inflicted by a non-military bullet. The third concerns a bullet hole in the metal sculpture, which at least one writer asserts was made by a bullet fired toward the National Guardsmen. The fourth involves a spent .22 casing which was found in the Prentice Hall parking lot on the day after the shooting. The fifth is Captain Ronald Snyder's claim that Jeffry Miller, a student who was fatally wounded in the shooting, was armed with a pistol at the time of his death. The sixth is the "Norman incident". Terry Norman, a Kent State student who allegedly was connected with the FBI and the Campus Police, was the only civilian known to be armed on May 4, 1970. Norman was carrying a .38 revolver, a low caliber weapon, which some witnesses say was fired immediately before the Guardsmen began shooting.

The matter of the object atop Johnson or Taylor Hall was not addressed at the trials; thus, we must rely on the existing secondary sources. Michener writes that:

A score of reliable witnesses testified that they saw a sniper atop Johnson Hall, and in a sense they did, for up there, standing against the sky, pointing a black rifle-like object directly at the Guard, stood a mysterious figure,

silhouetted ominously against clouds. A sharp-eyed photographer from the Record-Courier spotted him and took his photograph; it turned out he was Jerome P. Stoklas, an enterprising photographer from the college paper, who had climbed up there with a tripod and a long-distance lens that could easily have been mistaken for a rifle. 51

George Warren, a staff investigator for the Scranton Commission, testified before that body that:

There was a photographer on the roof of Taylor Hall taking photographs of the meeting that day on the Commons. It is our information that this photographer had his camera mounted on a rifle stock or a gun stock, something which could look like it might be a firearm. Subsequent examination and interviews have indicated that that person did not have a firearm, that in fact he had a camera and that he was up there to make photographs. 52

The Scranton Commission's Report stated that:

Jerome P. Stoklas, a photographer for the campus newspaper, the Daily Kent Stater, was taking pictures of the demonstration from the roof of Taylor Hall with a camera equipped with a telephoto lens. Most of the camera, lens, and tripod were painted black and might have given the impression from a distance that Stoklas had a rifle. Stoklas had no firearm. 53

Stoklas himself did not testify before the Scranton Commission, nor did he appear at either U. S. v. Shafer, et al., or Krause, et al. v. Rhodes, et al. But he did testify before the Kent State University Commission, for that body quoted him as saying that he had his camera mounted on a "gun stock . . . something which could look like it might be a firearm". 54

From this evidence, one must conclude that the "mysterious

object" on the roof of Johnson Hall {according to Michener} or Taylor Hall {according to Warren} was in fact a camera. I believe it significant that this matter was not broached at any of the Kent State-related trials. If there was any real evidence of a sniper atop Johnson or Taylor Halls, then the defense surely would have presented it.

On May 9, 1970, the Akron Beacon-Journal printed a front-page story which suggested that the bullet which had wounded Donald MacKenzie was not fired from a military weapon. That story reported that:

Dr. Joseph W. Ewing, plastic surgeon and an expert on ballistics wounds, said a bullet-wounded student he operated on was shot by something other than an M-1 rifle or a .45-caliber pistol, weapons carried by National Guardsmen.

Dr. Ewing said he treated Douglas MacKenzie, 21, of Philadelphia for a gun wound in the neck and face.

He said MacKenzie was shot in the back of the neck--about an inch in the left of the spinal cord--by a small-caliber bullet that came out through the young man's jaw and cheek.

Dr. Ewing said MacKenzie's wound was made by a steel-jacketed, non-explosive bullet.

"There were no steel fragments left in his face" said the president of the Ewing Oral and Plastic Surgery Group. "If it had not been steel-jacketed, it would have shattered when it hit his jawbone."

An explosive bullet would have killed the student, Dr. Ewing said. So, he said, would one fired from an M-1 rifle or a .45-caliber revolver.

"The bullet just missed cutting his spinal cord," he said. "A military weapon would

have blown his head apart."

During World War II, Dr. Ewing was assigned to the 109th Evacuation Hospital in Europe and handled plastic surgery in the care of more than 27,000 wounded.

"I am not a stanger to these wounds," he said. "I can't tell you what the boy was shot by, but it was not with a military or police weapon. Those are too big to have left that small hole in his face."

Dr. Ewing said MacKenzie could not have been struck by a ricocheting bullet.

"The bullet that hit him had to have a lot of pull to go through his neck, jawbone and cheek," he said. "A ricocheted bullet would have been slowed considerably and would not have gone through his jaw or left the type of hole it did." 55

Michener wrote that:

Scott MacKenzie, a student from Richboro, Pennsylvania, was more than 750 feet away from the Guard when the firing broke out, but a bullet reached him and shot away part of his jaw. An elderly doctor in Akron issued a statement to the effect that he could tell from looking at the wound that it had not been caused by a military bullet but by sniper fire coming from the opposite direction. This opinion was enthusiastically received by those who were committed to the theory that a sniper had started the shootout, but evidence from other experts established the fact that the injury had been caused by an M-1 bullet. MacKenzie himself pointed out that he had heard the first volley of shots, had run several steps, and had then been hit, so that even if the Akron doctor were correct and the wound had been caused by sniper fire, the sniper did not shoot until the fracas had been well launched by someone else. 56

The Scranton Commission examined this matter in some detail.

In its Report, the Commission wrote that:

Dr. Joseph W. Ewing, an Akron plastic surgeon who has both military and civilian experience treating gunshot wounds, was called to St. Thomas Hospital in Akron at about 3:00 p.m. to examine the wound of Donald S. MacKenzie. Dr. Ewing was surprised to see that the bullet had gone completely through MacKenzie's neck and cheek without doing extensive damage. The bullet had entered approximately one inch left of the spinal column, making a small entrance wound, then had shattered part of the jawbone and exited through the left cheek, leaving a wound the approximate size of a five-cent piece.

Dr. Ewing told FBI agents he believed the wound could not have been made by an M-1 rifle or a .45 caliber pistol because either of these would have caused more extensive damage to MacKenzie's neck and face.

A Commission investigator showed photographs of MacKenzie's wound to Lt. Col. Norman Rich, an Army doctor at Walter Reed Army Medical Center in Washington, and to two physicians on his staff. All three physicians agreed with Dr. Ewing's conclusions.

The Walter Reed physicians also indicated their belief that the bullet which struck MacKenzie was not a ricochet or a deflected round, since it still had enough velocity to pierce his neck and cheek. They stated, however, that the velocity of a .30 caliber M-1 bullet could have been considerably reduced if the ammunition were defective. They concluded that the wound was more likely caused by a smaller caliber weapon, possibly a carbine.

General Canterbury said he did not believe that any of the Guardsmen on Blanket Hill were carrying any long-barreled weapons other than M-1 rifles, M-79 grenade launchers, and the single shotgun.

A Commission investigator showed photographs of MacKenzie's wound and hospital records on his case to Dr. Milton Helpern, chief medical examiner of the City of New York. Dr. Helpern was told that MacKenzie had been located 245 to 250 yards from the position of men known to have fired .30 caliber M-1 rifles and .45

caliber pistols. Dr. Helpern said the wound definitely could have been caused by .30 caliber ammunition and that he could not rule out that it had been caused by .45 caliber ammunition.

Helpern said that, in his opinion, the entry wound in MacKenzie's neck and the exit wound in his cheek indicated that the bullet struck him on a direct line of fire without deflection or ricochet. He said the bullet had travelled a great distance and that it definitely was not a close-range shot.

Dr. Helpern said that in view of the many variables of gunshot wounds, he would like to see photographs of the other casualties in order to verify his opinion. He was shown the photographs of other victims, which he felt confirmed his initial judgment.

MacKenzie himself told a Commission investigator he believes he was shot by the Guard. He said he heard several shots and ran several steps before he was hit, and then heard shots after he was wounded.

The bullet that wounded MacKenzie was not recovered. No fragments from it were found in his jaw. He was wounded at the same time that the Guardsmen fired, and the trajectory of the bullet which wounded him is in the line of fire from Blanket Hill. Since MacKenzie had time to turn and run after the first shot, he plainly was not hit by that initial shot. Listeners who said they distinctly heard a first shot said the Guard's volley immediately followed it. To conclude that MacKenzie was struck by a sniper's bullet would indicate-- unless a sniper stood between him and the Guard-- that a sniper fired while the Guard fired and from behind and above them missed them, and struck MacKenzie. There is no convincing evidence that this happened. 57

Davies wrote that:

Dr. Helpern told the Scranton Commission that MacKenzie's wound "definitely could have been caused by a .30 caliber ammunition and that he could not rule out that it had been caused by .45 caliber ammunition." It seems reasonable

to assume that Dr. Helpern, during his many years of service as chief medical examiner of New York City, has had much more experience in the field of gunshot wounds than a plastic surgeon from Akron, Ohio. Dr. Sillary, the Akron Beacon Journal of May 24, 1970, reported, "pointedly disagreed" with Joseph Ewing. "It is entirely possible," Dr. Sillary told the newspaper, "for an M-1 bullet to cause a clean through-and-through wound without extensive damage." Dr. Sillary is not a plastic surgeon but a forensic pathologist in Detroit. Dr. Joseph Davis, chief medical examiner of Dade County in Florida, also rejected Dr. Ewing's assertion that the absence of extensive damage to MacKenzie proved that the wound was not caused by military ammunition. Dr. Davis, the Beacon Journal said, "suggested the bullet that struck MacKenzie may have passed through another person first." That person might have been Sandy Scheuer, who also received a through-and-through wound, which proved fatal. 58

The primary source material available on this question is scanty and incomplete. It should be recalled that MacKenzie testified at Krause, et al. v. Rhodes, et al., that he was "running away" when he was wounded. This would indicate that he was not hit by the initial shot: bullets travel faster than sound waves [hence the old military adage that "you don't worry about the ones you hear"]. Thus, if MacKenzie heard and had time to react to the first shot, then that shot could not have wounded him. It should also be recalled that MacKenzie's entrance wound was in the back of his neck, which seems to support the contention that he was "running away" when he was hit. Certainly his back was toward the Guard at that time.

Lt. Colonel Norman Rich testified at Krause, et al. v. Rhodes, et al., but he did not appear in person.⁶⁰ Rich testified via

video-tape, and for some reason his statement does not appear on the transcript of that trial and cannot be reproduced here. Dr. Milton Helpern also testified at that trial. Helpern, who did his internship and residency at Bellevue Hospital in New York City, testified as follows:

Q. In 1931, then you became associated with the Medical Examiner's office in the capacity you have just told us about?

A. As an Assistant Medical Examiner.

Q. Will you proceed from there to describe the progress and course of your work?

A. I worked full-time in the Medical Examiner's office as an assistant.

Then in 1943, 12 years later, I was promoted to the position of Deputy Chief Medical Examiner.

From 1943 until 1954 I served in that position of Deputy Chief Medical Examiner, and then when Dr. Thomas A. Gonzales retired in 1954, he being the Chief Medical Examiner, I was appointed by the Mayor as Chief Medical Examiner. {Note: Dr. Helpern remained in that position until he retired in 1973.}

Q. And were you not permitted to have your own private medical practice?

A. That's correct.

Q. Sir, in connection with the duties of the medical examiner's office, did that have to do with the entire population of eight million people in all of the five burroughs and counties of New York City?

A. Yes. The medical examiner's office is responsible for the official examinations of deaths of certain categories in the five burroughs, which are the old five counties.

Q. Sir, with regard to gunshot wounds, have you ever written or lectured on the general subject of gunshot wounds based upon your actual experience in this field as chief medical examiner and before that as deputy chief medical examiner and so on?

A. Yes.

Q. Tell us what you have done in the way of writing and lecturing?

A. Well, I have always been interested in the subject.

In 1937 the first edition of a textbook was published, authored by Dr. Gonzales and Dr. Vance and myself, and one of the important chapters in this book is that dealing with the effects of firearms and gunshot wounds.

This book was further elaborated and in 1954 the second edition was published, and the amount of text on gunshot wounds was increased.

Q. And, sir, have you lectured on the subject in addition to writing in the manner that you have told us about?

A. Well, yes. I am on the faculty and I was on the faculty. I am now Emeritus Professor, but until last year I was Professor of Forensic Medicine at the New York University School of Medicine, and I have been on that faculty since 1932.

Now, as a teacher, one does a lot of lecturing not only at the University, but I have been invited in numerous times to various other jurisdictions to lecture on the subject, and I have lectured exclusively on firearms and I have lectured also in combination with firearm injuries and other injuries and so on.

Q. Very well, sir. And just briefly I note, and then I will leave the subject, that you, in addition to being the chief medical examiner during all of the years you

mentioned, 1954 to 1973, New York City, were a professor and chairman of the Department of Forensic Medicine at New York University School of Medicine, you were a visiting professor of pathology at Cornell University Medical College, chief of pathology emeritus, Hospital for Special Surgery, also a visiting professor of pathology at South Carolina Medical College, also at the University of Southern California Medical School; is that correct?

A. That is correct.

Q. You have also been editor of numerous journals of forensic medicine and I won't go into the details for the sake of time, but I see there at least six different ones, including one in Germany?

A. That is correct.

Q. And that you are a member of numerous honorary medical societies and have been an officer of numerous medical societies; is that correct, sir?

A. That is correct.

Q. And chairman of many committees in this general field of forensic pathology?

A. Yes.

Q. Now, sir, in relation to Donald Scott MacKenzie, at the time you were requested to give your opinion on a consultant basis by the Scranton Commission, the President's Commission on Campus Unrest, were you provided with certain photographs of Donald Scott MacKenzie to look at?

A. Yes.

Q. I am going to ask you to assume that on May 4, 1970, Donald Scott MacKenzie, a young man about 21 years of age, was at a distance of about 500 feet or more from men who were firing M-1 rifles at a distance of 500 feet or more; that at the first sound of shots he began to run away from

the direction where he thought the shots were coming from; and that after running about four or five seconds he felt that he had been shot by an object penetrating in the back of his neck and causing injury in his face; that he was taken that same day to St. Thomas Hospital by ambulance in Akron, and that there the injuries were treated by surgical procedures which I won't go into now; that photographs were taken some three days later which are the subject of the photographs that you have before you; I am going to ask you, sir, based upon all of your study of this young man's case, did you form an opinion as to whether or not the bullet which was the subject of this wound was a high-velocity bullet?

A. Yes.

Q. What is your opinion today, sir?

A. In my opinion, this track would readily be produced by a high-velocity rifle bullet and I think we can eliminate any weapon that would fire a lead bullet.

I can't altogether eliminate a .45 caliber automatic, although the distance would, the fact that this thing went right on through and produced so little damage, I don't know that the velocity of that type of weapon would be sufficient, but a .45 might.

Q. Doctor, based upon your study, your examination, in the words that His Honor has just used, do you have an opinion as to what type of weapon probably did cause this wound to happen?

A. I would say that it is more probable that this was a high-velocity bullet fired from a rifle.

Q. All right. And I ask you whether or not you have had similar types of wounds in your experience that you have examined as a forensic pathologist, known to have been caused by high-velocity bullets fired from rifles?

A. Yes.

Q. And can you tell us how frequently or in numbers can you project it so that we would have any idea of the basis of your experience on this point?

A. I have no count on that, but I would say we see rifle bullets not infrequently, they are not as common as handgun injuries, and we have enough rifle, high-velocity rifle bullet injuries that pass in and out of the body and where the entrance wound and the exit wound are not very different in size, in fact, with less conspicuousness than what you see here. LL

Thus, the limited material I was able to examine indicates that MacKenzie was not wounded by a non-military bullet. Without the testimony of Dr. Rich, this conclusion must remain tentative. But perhaps it would need to remain tentative even with Dr. Rich's testimony; when two qualified experts take diametrically opposed positions on a particular issue within their specialties then there is little that a layman can do. The question of MacKenzie's wound must remain open.

Another question which I am unable to positively answer concerns a bullet hole in the metal sculpture in front of Taylor Hall. The sculpture was directly in the line of fire, and it is likely {though not absolutely certain} that the inch-wide, almost perfectly round hole was made on May 4, 1970. Alan Stang wrote in the periodical "American Opinion: that:

One side of the plate is jagged, with shards of extended metal around the circumference of the hole. That is the side of the plate where the Guardsmen were standing, which means

that the bullet that made the hole was fired at them, not by them. It does not even take a ballistics expert to determine that the aforesaid condition of the plate indicates that the bullet exited from it and sped toward the Guardsmen. The case is proved. There was a sniper!

Nevertheless, your reporter called Henry Dombrowski, who heads the Bureau of Criminal Investigations (which is part of the Ohio attorney general's office) at Richfield, Ohio, and asked for an expert. Dombrowski recommended C. H. Mallett, who was chief of the Windham, Ohio, Police Department for twenty-eight years, has an instructor's card for Ohio police, and participated in the Law Enforcement Officers Training Program. Chief Mallett examined the bullet hole in the steel plate for several minutes with various instruments, and I asked him which way the bullet went. He pointed to the spot between the pagoda and the corner of Taylor Hall, where the Guardsmen had been standing.

"How sure are you?" I asked.

"Absolutely positive."

"Is there any doubt in your mind?"

"No."

In fact, there is also the testimony of Sergeant Evanko, who reports that on the morning after the shooting, shortly after eight a.m., he saw an F.B.I. agent examining the bullet hole and asked: "What direction would you say this round came from?"

"Well, Sergeant, I am not a ballistics expert, but I can tell you this shot was fired in the direction of the Guard." L2

When I first viewed the hole in the sculpture, that was my first reaction. The ragged, burred edges of the hole were facing toward the Pagoda area; it certainly looked as if the bullet that made the hole was fired in that direction. This matter was not,

however, raised at either U. S. v. Shafer, et al., or Krause, et al.,
v. Rhodes, et al. The only other reference to this matter that I
was able to find was an Akron Beacon-Journal article which appeared
on May 10, 1970. That article stated that:

Tests by a Beacon-Journal research team have shown that the bullet which passed through an abstract metal sculpture near Taylor Hall on the Kent State University campus came from the National Guard position rather than toward it.

It did not show that the shot was fired by Guardsmen, but only that it was fired in the same general direction the Guardsmen had fired when four KSU students were killed and nine others wounded last Monday.

The 15-foot-high sculpture by Akron sculptor Don Drumm, was to the right of the Guardsmen and about 30 paces in front of them when the shots were fired.

With assistance from Drumm, the Beacon-Journal obtained a steel plate of the same type used in the sculpture and erected it Thursday on a Suffield Twp. farm.

A test shot was fired at the plate from the same distance and at about the same angle the Guardsmen were from the sculpture.

The team used a rifle and .30-caliber ammunition like that used by Guardsmen in their M-1 rifles.

The test panel showed the larger ragged edge of the bullet hole was on the side where the bullet entered the panel, and the smaller, smoother edge was where the bullet exited. 63

Once again, the available evidence is incomplete, and hence no definitive conclusions may be drawn about the hole in the sculpture. Neither Stang or the Akron Beacon-Journal "research team" are experts on ballistics. But two factors strengthen

the contention that the hole was made by a National Guard bullet. First, none of the individuals in the vicinity of the sculpture testified about the hole. Howard Ruffner, John Filo, Joseph Lewis and several students who were on the Taylor Veranda surely would have noticed if the first bullet to be fired on May 4, 1970 had slammed into a half-inch piece of iron near where they were standing. Second, this matter was not brought up at either U. S. v. Shafer, et al. or Krause, et al. v Rhodes, et al. If there was any evidence that the hole in the sculpture was caused by a sniper's bullet, then the lawyers for the defense certainly would have raised this issue.

Several Guardsmen testified that they thought the first shot was a .22 round. On May 5, 1970, Colonel Charles Fassinger apparently found a spent .22 cartridge in the Prentice Hall parking lot. At Krause, et al. v. Rhode, et al., Fassinger testified as follows:

Q. And was this search made under your command?

A. Yes, sir. I was even present.

Q. Did you find an object?

A. I did, sir.

Q. What did you find and where?

A. . . . a spent .22 cartridge.

Q. And where did you find that spent--

A. Down in the very first stall in the parking lot.

Q. And would you describe just what it looked like?

- A. It was a .22 cartridge. We put it into a styrofoam cup, covered it and tagged it and . . . turned it over to the Highway Patrol.
- Q. Did they ever do a ballistics test on that in relation to any .22 caliber weapon known to have been on the campus that day?
- A. Sir, you would have to ask them that. I don't know. b4

For some reason, the officials of the Ohio Highway Patrol who testified at Krause, et al. v. Rhode, et al., were not asked about the cartridge. In fact, this small notation is the only information I could find on this subject. Conclusions, even tentative ones, would be pure speculation. Perhaps the spent .22 shell found by Colonel Fassinger, was in fact ejected from a sniper weapon on May 4, 1970. Perhaps it was one of the Guardsmen's own bullets that somehow found its way into the parking lot. Perhaps the cartridge had been lying in that parking lot for six months before Colonel Fassinger picked it up. Without ballistics analysis, we just do not know. And there is no indication that such analysis was conducted, either by the Ohio Highway Patrol or the FBI.

The question of whether or not Jeffry Miller was carrying a pistol is discussed in only two sources open to the public. The first is Michener's Kent State, which includes the following passage:

When Captain Ron Snyder ran over to inspect the fallen bodies of Sandy Scheuer and Jeff Miller, he was either the first or among the very first to reach them. We have seen how he mistook Sandy for a boy, but this was understandable. What happened at the Miller boy's

will be long debated. Snyder says, matter-of-factly, "While we were in readiness at the east end of Taylor Hall, I spotted this especially obstreperous demonstrator with long hair, headband and cowboy shirt. Jeff Miller, I was to learn later. He kept charging up the hill to torment the retreating Guards, and this was damaging enough, but he also kept shouting at the top of his voice, "Kill! Kill'. Kill!" And then he whipped a pistol out of his blouse and started pointing it at the Guardsmen by the Pagoda. I had just about decided to shoot him down with my revolver when the volley began at the top of the hill. Halfway through the thirteen-second fusillade Miller spun around and fell on his face in the middle of the road, mortally wounded.

"I was the first person to reach his body, and as I bent down to assure myself he was dead, I saw protruding from under his chest the handle of the revolver. Quickly I snatched it up and stuck it inside my blouse," Snyder did not disclose his knowledge of Miller's revolver for about two months; why, he does not say.

This story has never before been published, and when Jeff's close friends were told of it, they exploded. They simply would not listen and became profane if anyone tried sensibly to discuss the possibility that Jeff might have been carrying a gun that day, or threatening the Guard with it if he did have one.

"Absolutely preposterous!" his close friend Neil Phillips snaps. "I knew Jeff intimately. He wouldn't have been able to shoot down a fly that was tormenting him. He loathed guns."

John Moir, his roommate, says with great vehemence, "That Jeff could have been carrying a gun that day is ridiculous. I saw him thirty minutes before he went to the rally, and I know he didn't have one then. I am positive that if he'd been planning anything so unusual as carrying a gun, he'd have told me. I just can't believe anything like that."

Jerry Persky, who is seen in photographs standing beside the body, runs his fingers

through his long black hair and snorts, "That's crazy. Whoever's saying that about Jeff is just trying to discredit him. I was standing near him before he was shot, and I certainly didn't see him running around anywhere waving a gun. After I got to him lying in the road, I saw this girl kneeling over him crying, and grabbing at some beads she had around her neck. Anyway, nobody had touched Jeff, so I got another kid, Brian Fisher, and we turned him over. There sure as hell wasn't any gun on him then, or I'd have seen it. And I've never heard anybody say anything about him waving a gun that day. The whole story is bull-shit."

We have seen the gun attributed to Miller, an old-fashioned, rusty .32 rimfire revolver. It was unloaded, unfired, and, because it had no hammer mechanism, unfirable. It had a short barrel, wooden handgrips and a trigger that folded out of the way. No one could tell us whether .32 rimfire cartridges were still being made. b5

Michener concluded that he did "not believe that Jeff Miller carried a gun"^{b6} on May 4, 1970. Four years later, this conclusion was proven to be true. At Krause, et al. v. Rhodes, et al., Captain Snyder testified as follows:

- Q. Is it a fact that you told James Michener that you saw a gun sticking out of the shirt or the clothes of Jeff Miller as he was lying there dead? Yes or no, sir?
- A. Yes.
- Q. Now, what part of his body did you see the gun sticking out of, according to what you told James Michener?
- A. Underneath the side, I guess.
- Q. Sir?
- A. I think it was the side.
- Q. And that was a lie, was it not, sir?

MR. BROWN: Objection.
THE COURT: Sustained.

BY MR. KELNER:

Q. Was it true that you saw a gun on the body of that boy?

A. No.

Q. When did you get {the gun}?

A. On the day of the shooting.

Q. You found a gun on the ground at Kent State University?

A. Yes.

Q. Now, this gun . . . can you describe that, the one that you said originally you had found on the body of Jeff Miller but you had not really found it?

A. It was an old gun, short pistol, revolver kind of gun, rather. It hadn't been fired. Somewhat rusty, had, I believe, a wooden handle.

Q. A wooden handle?

A. No trigger housing, as I recall.

Q. In effect, that was a piece of junk that could be fired, is that right?

A. Yes.

Q. Is that the condition that it was in when you found it, you claim, on the grounds of Kent State University on May 4?

A. Yes.⁶⁷

Thus, it appears that Jeffry Miller was not armed on May 4, 1970. Yet certain unanswered questions remain. When on the day of the shooting, did Captain Snyder find the inoperable pistol? Was it before or after the fatal volley? Whose gun was it, and

why were they carrying it?

The "Terry Norman incident" is one of the most puzzling aspects of the shootings at Kent State. Terry Norman was the only student known to be armed on May 4, 1970; he was carrying a .38 revolver. With one exception, all eyewitnesses to the tragedy of May 4, 1970, agree that Terry Norman was the only civilian observed to be armed on that day. That exception is John Bambeck, a construction worker who testified that he saw a young man carrying a rifle approximately ten minutes after the shooting occurred. At Krause, et al. v. Rhodes, et al., Bambeck testified as follows:

Q. About what time did this occur, this unusual event that you saw and the shooting?

A. Well, this would have happened maybe eight or ten minutes afterwards.

Q. Tell the Court and jury what you saw, sir?

A. We had a --

Q. Not what we, just what you saw.

A. I had--the construction site there, there was a chain link fence on the east side of the construction site with a sidewalk. The students would have to cross the bridge I had over the tunnel and walk a sidewalk on that side of the fence.

Well, at that time, this young gentleman came walking down through there, and he was a young lad. He was a white Caucasian and he was carrying a Thompson Contender rifle.

Q. Where was he moving to, sir?

A. He went to the Chemistry Building.

Q. And did he fire that rifle?

A. I don't know.⁶⁸

No witnesses testified at either trial that they saw any armed civilians prior to the shootings; most significantly, no Guardsman so testified; FBI Special Agent Douglas Wells, in connection with the FBI investigation of the tragedy at Kent State, interviewed all members of G Troop and Company A who were present on Blanket Hill on May 4, 1970. At U. S. v. Shafer, et al., Wells testified as follows:

Q. How many National Guardsmen did you interview?

A. 95.

Q. Up until the time of the shooting, did any of these men tell you whether or not they saw anyone in the crowd with a gun?

A. They said they saw no one.⁶⁹

Well's testimony was supported by the testimony of the Guardsmen at Krause, et al. v. Rhodes, et al.

Q. Did you see any students with weapons at any time that day?

A. At any time that day?

Q. Yes.

A. No, I did not see a student with a weapon in his hand, a pistol or rifle. Is that what you are talking about?

Q. Yes. Any shooting weapon?

A. No.⁷⁰

E5 Lawrence Shafer testified as follows:

Q. Had you at any time that day anywhere, on the practice field, on the Commons, on

the trips or the routes you took between one point and another, anywhere at all that day, did you see anyone other than a National Guardsman with a pistol or a rifle or any kind of a firearm?

A. No, sir.⁷¹

SP4 Ralph Zoller testified as follows:

Q. Did you see anybody with a gun in their hand?

A. No, but I--

Q. Other than troops?

A. No, sir.⁷²

PFC James Brown testified as follows:

Q. Mr. Brown, did you see any of the students shortly before and at the time of the firing with any kind of firearms?

A. No, I did not.⁷³

PFC Lawrence Mowrer testified as follows:

Q. Did you, at any time that day, see any students with a gun?

A. No, sir.

Q. A knife?

A. No, sir.

Q. A bottle?

A. No, sir.⁷⁴

PFC Paul Noujacks testified as follows:

Q. {Did any students have} guns in their hands?

A. No, sir.⁷⁵

P2C Robert Hatfield testified as follows:

Q. Did you see any student with a gun at any time during that day?

A. No, sir.⁷⁶

Thus, it appears that Terry Norman was the only armed civilian on May 4, 1970. The "Norman incident" is certainly important to any appraisal of that day's events, particularly since several Guardsmen claimed that the initial shot was fired by a low-caliber weapon. Yet both the Justice Department's summary of the FBI report and the Scranton Commission's Report gave the incident only cursory notice, and the Special Ohio Grand Jury Report ignored it completely. The Justice Department wrote that:

There is no evidence of the use of any weapons at any time in the weekend prior to the May 4 confrontation; no weapon was observed in the hands of any person other than a Guardsman, with the sole exception of Terry Norman, during the confrontation. Norman, a freelance photographer, was with the Guardsmen most of the time during the confrontation. A few students observed his weapon and claim that he fired it at students just prior to the time the Guardsmen fired. Norman claims that he did not pull his weapon until after the shooting was over and then only when he was attacked by four or five students. His gun was checked by a Kent State University policeman and another law enforcement officer shortly after the shooting. They state that his weapon had not been recently fired.⁷⁷

George Warren, staff investigator for the Scranton Commission, testified before that body that Norman's revolver was "immediately examined by two campus policemen and it was found not to have been fired."⁷⁸ This view was echoed in the Commission's Report:

A free-lance photographer was taking pictures of the demonstration and was seen with a pistol after the Guard fired. Several civilians chased him from Taylor Hall into the Guard line, where he surrendered a .38 caliber revolver. The gun was immediately examined by a campus policeman, who found that it had not been fired. 79

Michener wrote this of the Norman incident:

The third incident was totally bizarre, but it received so much publicity that many people to this day offer it as proof that students fired the first shot and were thus to blame for all that followed. Some pages back we saw Jack Deegan trailing the Guard up the hill and calling cadence for them. It was said then that he was diverted from this perilous game when he saw his roommate, Tom Masterson, getting clobbered over the head by a revolver. It was held by a student with a camera and when the police apprehended him, the story flashed across America: "Kent Mystery: Armed Student". It was generally assumed that a shot from his pistol had launched the riot.

Deegan says, "When Masterson approached him, the boy assumed that he intended snatching his camera, it being a tactic of radical students to prevent photographs on campus to forestall identification in subsequent investigations. So the fellow jerked out this revolver and started pistol-whipping Masterson about the head. Tom yelled for help, and I rushed over, but when the photographer saw me bearing down on him, he started running like hell, all the way back to the ROTC building, where he ducked for safety inside the perimeter established by the Guard."

Mark Malick, a boy from Weirton, also witnessed this scene: "I was on the south porch when they started to fire, and a kid next to me said, 'No sweat, they're firing blanks.' I paid no attention because my eye was on a cameraman in civilian clothes. He was having an argument with someone. Looked as if he were afraid he might lose his camera. So he whips out a pistol in his right hand, and as I watched, he fired it. Then ran like hell down the hill toward ROTC."

Who was the mysterious cameraman? When the story finally broke, there were some red faces. He was Terry Norman, a nineteen-year-old Kent State student who was rumored to have been hired by the FBI and the campus police to photograph disturbances. {Later the FBI denied that he had ever worked for them.} He appears to have been armed illegally, and to this day many students are convinced that he had been sent on campus to provoke a riot and that it was his flashy display of a revolver which triggered the shooting. However, this theory is damaged by the fact that testimony is contradictory as to whether he went into action before or after the shooting began. One meticulously researched report says, "He was seen with a pistol after the Guard fired," but we have already heard Jack Deegan say that he saw Norman with the revolver before the firing. The testimony of Mark Malick, cited above, would indicate that Norman did not swing into action until after the shooting, but Harriet Wolin, a nineteen-year-old-sophomore from Long Island, was in position to see what happened, and she says, "The photographer pulled a gun out of his jacket and struck a friend of mine on the side of the head. Shortly after that the Guardsmen opened fire." Another witness, who asked that his name not be used, said, "Norman ran away from the attacking students, gun aloft, right at the Guardsmen, who were only ten yards away. The soldiers, thinking themselves under attack, opened fire. He caused it all." We are of the opinion that Norman's movement toward the Guard--if indeed it took place, which we doubt--occurred after the firing of the first round and could not have been a cause of that firing.

Norman's revolver was retrieved within minutes by the campus police, who examined it and reported, "It was not fired." To this, the sponsors of the agent provocateur theory respond, "The police lied. Norman did fire the first shot, as he had been ordered to do. They're covering up for their boy." We found no evidence of this and no substance to the theory. 80

The Akron Beacon-Journal reported on May 24, 1970, that film

"showed a man clutching a briefcase chasing {Norman}, yelling 'Stop that man! He has a gun! He fired four shots.'"⁸¹ The report also identified the campus policeman who examined Norman's gun as Tom Kelly and quoted him as saying that the gun was "fully loaded" and "had not been fired."⁸²

Eszterhas and Roberts quote sophomore Gene Pekarik as saying that he saw Norman "running around near Blanket Hill 'like a wild-man.'"⁸³ Eszterhas and Robert also interviewed Norman, and quote him as saying "I was up on the hill after the shooting and I stopped to help one of the students who'd been hit and some of them surrounded me and yelled 'Get the pig! Get the pig!'"⁸⁵ He alleged that one of the students harassing him reached for a knife and then he, Norman, drew his .38 and "scared" the student away.⁸⁶

Several witnesses at Krause, et al. v. Rhodes, et al., testified about the Norman incident. One was Lieutenant Dwight Cline, who testified as follows:

Q. Did you see an incident take place when you were back down by the burned-out ROTC Building?

A. Yes, I did.

Q. Tell us what that incident was, what you observed, and point out where you observed it?

A. Yes, sir. As we were standing here back on the line, as to where we originally started, I saw a man in a sportcoat come running down in this direction from around, evidently he came from around this area somewhere and came running down past--

Q. When you say, "this area somewhere,"--

A. Well, I would assume it was either around Taylor Hall or up in this area where I seen students once and we had come back off that hill.

Q. All right. What did you notice about him or what did you see?

A. I noticed that he had a pistol in his hand.

Q. Where did this man end up?

A. Sir, the pistol was taken away from him by one of our people in our unit and the Lieutenant said, "Give me the pistol from this man," which we did, and we handed the pistol at that time to the Security Police that were at the campus.

Q. All right.

Now, I am handing you Defendants' Exhibit AD7. Will you examine that, please?

A. Yes, sir, I think this is the man.

MR. FULTON: I want him to say that is Terry Norman.

MR. KELNER: We will concede it is Terry Norman as the person depicted there. B?

Lieutenant Howard Fallon testified as follows:

Q. All right. That is my next question.

As you and the other troops were going back to the ROTC Building, what unusual incident did you see?

A. There were a group of five or six students attacking a photographer or a person that appeared to be a photographer.

Q. How was that person dressed?

A. The person had a sportcoat on, sport slacks, regular shoes and he had a camera case or film cases around his neck.

Q. What did you see, hear and observe?

A. He was set upon by this group of people and they were hitting him, and I took one of the men in addition to Leon Smith with me and we started out that way, away from the rest of the troops, and there was more people coming forward.

I blocked, I took the M-1 from this one fellow and blocked this guy and we started over there and then even more people came, and we got out of there because it didn't look too good for us.

Q. What happened to the man being set upon by these five students?

A. At an interval later after we were down at the base of the hill, this man came running down the hill. He was being pursued by several people and they were yelling "Stop him, stop him. He killed someone. He shot him."

And he ran into the lines and there was four or five Guardsmen immediately around him, I think, and a plainclothed State Patrolman or it could have been a Kent State official who was there, and a uniformed Highway Patrolman.

They took a weapon from the man.

Q. Were you there when this happened?

A. Yes, sir. I was just right outside the circle, about from here to that recording station right there. That's five feet.

Q. Five feet. All right. That is pretty close.

What did you see insofar as this man that looked like a photographer in civilian clothes and what happened there?

A. His clothes were disarranged and he made a statement, he said, "I had to. I had to. They were trying to kill me."

And the officer said, "What? Did you have a gun?"

And the guy said, "Yes."

He went like this and he had a gun, five-shot Chief Special, Smith & Wesson, nickel-plated, tucked in his waist pants.

Q. A Chief Special, Smith & Wesson, nickel-plated?

A. Yes, sir.

Q. How do you know all that?

A. I own a five-shot Chief Special that's stainless; they are similar makes.

Q. And what happened then?

A. The officer opened the cylinder, a revolver as opposed to an automatic, a revolver has a cylinder which contains the shells, and he opened the cylinder.

Q. And what did you observe?

A. There were several of the shells with dented primers and--

Q. Could you see that from where you were?

A. Yes, sir, I could.

Q. Now, you say a shell had a dented primer?
What does that mean?

A. Generally, it connotes that that round had been fired, unless you have a misfire.

Q. And how many shells in that weapon did you see with dented primers?

A. Seems to me it was three, it could have been two.

Q. Did you examine that weapon?

A. I didn't have physical control of the weapon, no, sir. 88

Sergeant Michael Delaney testified as follows:

Q. Let's go on to the Terry Norman incident. You saw that, didn't you?

A. Yes.

Q. We all know what the Terry Norman incident is now.

You saw Patrolman Rice pick up the gun from Norman, didn't you?

A. I don't know if it was Patrolman Rice. He did hand the revolver over to a uniformed policeman, yes.

Q. And what did you see that patrolman do, whoever he was, with the gun?

A. When I saw him he was simply holding the gun in his hands after Terry had turned it over to him.

Q. Did he look at it?

A. Just at that point, yes.

Q. And what did the patrolman say when he looked at the gun?

A. I thought I heard him say, "My God, it's been fired."

Q. You heard him say, "My God, it's been fired," right?

A. Yes, sir.

Q. Did this officer, whoever he might be, break the chamber or the cylinder of the gun open?

A. That I don't know. I was watching Terry Norman after that.

Q. Did the officer smell the gun?

A. Not that I know of. ⁸⁹

Officer Harold Rice of the Kent State University Police Department, testified as follows:

Q. Will you describe that to us, please?

A. I was with my partner, Patrolman Bertholdi, and I heard my name being called out, "Harold," and this is what attracted my attention to the hill.

I observed a person running down and two people chasing him, one black male and one white male.

Q. Did you perceive who was calling your name?

A. Yes, sir. As my name was being called, "Harold, Harold, stop him, he's got a gun," the black male knew me and I knew him, his name was also Harold, and we were acquaintances, very close acquaintances, and he was chasing the individual down over the hill.

Q. Did you see the person who was being chased?

A. I observed him as he was coming down over the hill.

When he almost reached to the bottom, I requested some of the Guards to stop him and I run over to him.

Q. Had you seen that individual who was being chased previously?

A. After he had removed his gas mask, I recognized his face. I did not know his name at that time. I had seen him prior to that.

Q. Do you know now the name of that person?

A. I do, sir.

Q. What is the name of that person?

A. Terry Norman.

Q. Did you speak to him at that time after he had been chased down to the Guard line?

A. I did, sir.

Q. Would you tell us what if anything you said to him?

- A. When he recognized me, he told me that,
"Harold, they are trying to kill me."

I looked at him, and I said--when the people was chasing him down into the hill, I heard them say, "He has got a gun."

I asked him if he had a gun, and his answer was: "Yes."

- Q. And did you say anything further to him then?

- A. Yes, sir. He started to reach for it. I told him not to touch his gun for I was afraid he might get killed. I meant someone else in the crowd might have seen him withdraw his weapon and perhaps have shot.

He did give me his gun at that time.

- Q. Did the gun pass through anyone else's hands between the time it left Mr. Norman and the time you took it in your hands?

- A. Not within my knowledge. I took it right directly from Mr. Norman.

- Q. Did you, at that time, inspect that gun?

- A. I did, sir.

- Q. Would you describe for us what you did with respect to that gun?

- A. Quickly I passed it across my nose to see if I could smell burnt powder.

Then breaking open the cylinder, quickly looking at the powder--cartridges to see if the hammer had hit any of the primers.

I did not observe any indentation of any of the primers.

- Q. When you sniffed the barrel, did you detect any odor of burnt powder?

- A. No, sir, I did not.

- Q. In your experience as a police officer in

the characteristics of firearms, do they retain a certain odor of burnt powder for a period of time after they have been discharged?

- A. If they have been discharged in a very short period of time, there is a faint odor of burnt powder. There is an odor.
- Q. You say you also inspected the cylinder of the weapon.

Let me ask you this: Did you break open the weapon?

- A. Yes, sir.

- Q. Would you describe for the jury what is meant by "breaking open the weapon" and what it involves?

- A. When you break open the weapon, it means you can look at the cylinder, whether it is loaded. When you break open a side-arm of any sort, the round cylinder comes out and this is where you indent the shells or place the shells in the cylinder.

Then you bring it back up into firing position.

- Q. When the cylinder on a revolver is broken open, what portion of the shells do you see?

- A. I see only the primer, sir.

- Q. At the time that you took the gun from Terry Norman, did you inspect the front side of the cylinder to ascertain whether there were bullets in the shells?

- A. I did not, sir.

- Q. What part of the cartridges in the revolver could you see when you cracked it over, broke open the revolver and inspected it?

- A. The primer, sir, as I have indicated, the back end.

- Q. The primer is the flat base end of that tube is that correct?
- A. That is correct, sir, with the small end toward the cap, the primer is in the middle.
- Q. Now, can you ascertain, from the inspection of this cartridge, 51066, whether the primer in that cartridge has been fired?
- A. This primer here appears not to have been fired.
- Q. And how are you able to determine that?
- A. If the pin, if the hammer on the pistol with the point that struck it there would be an indentation in there.
- Q. When a .38 caliber pistol is discharged, Patrolman Rice, what causes the indentation in the primer?
- A. The hammer.
- Q. Can a .38 caliber pistol be discharged without causing an indentation in the primer, in your experience?
- A. Within my experience, the answer, unless it is rim fired, and I have not seen a rim-fired .38 caliber pistol, all .38's that we have had contact with, has a hammer that will make the indentation, all of the ones that I have had experience with.
- Q. What did you observe about the primers in the cartridges in the Terry Norman pistol?
- A. I observed the primers in the pistol not having any indentation on the ends of them, such as in Exhibit 51066.
- Q. Thank you.

Now, when you inspected the Terry Norman pistol, do you recall whether any of the chambers were empty, any of the bullet chambers were empty?

- A. None within my knowledge. They were all filled.
- Q. Patrolman Rice, what did you then do with the pistol that Terry Norman had given to you?
- A. I gave the pistol to Detective Tom Kelly.⁹⁰

Three students testified at Krause, et al. v. Rhodes, et al., about the Norman incident. Joy Bishop Hubbard, Bruce Phillips and Patricia Revera viewed the events of May 4, 1970, from the roof of Johnson Hall; they may be seen in Photographs 23 and 24 in the album attachment to this paper. Joy Bishop Hubbard testified as follows:

- Q. Now, will you tell the jury and tell the Court what you saw, what you observed prior to the time you heard these Guardsmen rifles?
- A. I saw a male dressed in a gold, yellowish-gold sportcoat, come to the corner of Johnson Hall from the Commons area, from that general area, come to the corner of the building. He had a briefcase in his left hand, he stood at the corner very briefly, pulled a gun from his briefcase and fired one shot into the air.
- Q. What was the next thing you heard or observed?
- A. I then saw this individual leave the same way he had come.
- Q. How much time elapsed between the time you heard the first shot you have described and the shots from the Guardsmen rifles which you have described?
- A. From two to five seconds.
- Q. Did he aim this pistol or weapon at anybody?

- A. No, he aimed it right in the air.
- Q. Now, is it a fact that the first shooting that you did hear came from the area of the Pagoda where the Guardsmen were?
- A. The first shot I heard was from the male in the yellow sportjacket right below me at Johnson Hall fired one shot into the air. That was the first shot that I heard. 91

Bruce Phillips testified as follows:

- Q. Bruce, as His Honor said, Joy Bishop testified that a person in this position fired a shot. What is the fact as to whether you saw a person fire a shot from that area?
- A. There was no one in that area.
- Q. Did there come a time that you moved back to this particular wing with Joy Bishop and Pat Revera?
- A. Yes.
- Q. How long after the shooting was it that you moved back to that particular wing?
- A. About five minutes.
- Q. All right. Where were the National Guard when you moved back to this particular wing, indicating the east-west wing?
- A. Going back down the hill of the Commons.
- Q. Did there come a time that you did see any individual in a sportcoat in this particular area?
- A. Yes, sir.
- Q. And tell me--how long after the shooting was this particular incident that you are going to tell us about?
- A. It would be about five minutes again, approximately.

Q. Which wing of the building--

MR. FULTON: Excuse me. At this time I am going to object because I don't believe this woman testified to anything five minutes after the shooting. She just didn't.

THE COURT: I will sustain the objection because this has nothing to do with it.

MR. KELNER: Referring to an incident where a gentleman in a yellow or a tan-colored jacket was seen with a weapon and being chased, we are now referring to that episode and we are fixing the time when any such incident did take place in the presence of this eyewitness, sir, and we seek the opportunity to establish as to when there was any such incident and what did occur.

THE COURT: If counsel will let me make my ruling, I will make it.

This witness has testified he did not see any person in a sportcoat at the foot of Johnson Hall shoot a pistol. Now, that ends it. The fact that maybe two or three days later or even 10 minutes later he saw somebody doing something else is not rebuttable. That's another matter.

If you want to put that in, it should have been put in in your case in chief.

MR. KELNER: Now, if your Honor please, Joy Bishop testified that an incident occurred in her presence involving a man who withdrew a pistol and fired it in the air. She said that it happened and fixed the time as within two to five seconds before the National Guard fired. This witness will testify that there was a man in a sportscoat. That he ran into the ranks of the Guard after the shootings.

That he was surrounded:

That he did not fire and that he was chased back to the area of the ROTC Building.

And I submit, sir, in all fairness, that this witness should be permitted to testify to these events. It is not a week later or a day later. It does involve the same incident which was the subject of the testimony of Joy Bishop and it does deserve clarification from this witness who actually saw it happen.

Otherwise, sir the way the record will now remain, it is as if Joy Bishop did see a civilian fire a shot two to five seconds before the National Guard fired or about the same time as the National Guard fired, as she said on cross-examination, but would stand unrefuted in the face of now available eyewitness testimony which we were fortunate to bring here from a long distance to reconstruct the events of the three persons on the roof of Johnson Hall.

THE COURT: Gentlemen, rebuttal is rebuttal.

This man has rebutted the lady's testimony. She testified positively and unequivocally as to what she saw happen before the shooting. Now, this man has testified equally positively that it didn't happen. Her testimony has been refuted by his. That is the end of it. 92

Patricia Rivera testified as follows:

Q. Now, on May 4th, 1970, did there come a time that you were along with Joy Bishop on the roof of Johnson Hall?

A. Yes.

Q. And at that time that you were on the roof of Johnson Hall, do you remember anybody else being with you?

A. Joy and Bruce.

Q. I ask you whether or not at any time on that day you saw an incident involving a civilian being chased by anybody?

A. Yes, I did.

MR. FULTON: Objection.

THE COURT: Sustained.

- Q. At any time you were on the roof of Johnson Hall, from the time you first went up before there were any shots until you left the roof of Johnson Hall, I ask you as to the fact as to whether or not you saw any civilian with a pistol in his hand anywhere?

MR. BROWN: Objection.

THE COURT: I am not enthusiastic about her answering it, because it isn't precisely the question that she ought to be answering. I think the question is what did she see there.

MR. KELNER: All right.

- A. There were no students present in that area down below there . . . There was no one there in that triangle because I can remember looking down there and there was no one there. It was empty.
- Q. Within the two to five second before the sound of shots coming from the area of the National Guardsmen, I ask you whether or not you heard any sounds of any shots from any area at all?
- A. No. ⁹³

Terry Norman testified at Krause, et al. v. Rhodes, et al., though not in person; he made his statements in the form of a deposition, which was read into the trial record by counsel for the plaintiffs. Norman testified as follows:

- Q. On May 4, which was Monday, was there some time on that date that Tom Kelly asked you to photograph some activities?
- A. I believe so.
- Q. Could you describe the circumstances of that request?

A. Well, there had been information received, I guess, by the police department, well, it was common knowledge and they were handing out flyers, that there was going to be a demonstration at noon encouraging one and all to come and it was going to be held in the Commons and they knew something. I believe I talked to Tom or somebody from the department and they wanted me to take pictures of this.

Q. And did you agree to take some pictures?

A. Yes.

Q. What was the arrangement under which you were going to take the pictures? Were you to be paid?

A. I took the pictures for free because I like to see these people go to jail.

Q. Did they provide your film or did you provide your own film?

A. No. Most of the film I did, but I think on this particular occasion they provided the film, either they did or the FBI did, one of the two.

Q. Did you carry some identifying credentials of some kind on May 4th?

A. Yes. I think I had a pass I had gotten either from, I got it, I remember where I got it. It was at the counter where we pay tuition. That is where I got it.

Q. That is in the Administration Building?

A. Yes.

Q. Do you know from whom you got the pass?

A. It was a university employee.

Q. Did you at any time have a card or pass with some kind of press credentials issued to you by a National Guardsman?

A. I don't think it was by a Guardsman. I

think by the time Monday arrived they had pretty much controlled everything, but I think it was university news service or something like that on it and that was it.

Q. There is a Guardsman named Delaney who was a noncommissioned officer press or public relations officer, who has testified on deposition that he issued you a press pass. Do you remember that?

A. Delaney sounds familiar, but I think I read it somewhere in a newspaper. He could have been the man that issued it, but I don't remember who he was.

Q. By the time the Guard reached the crest of the hill where the shooting occurred, had you crossed the sidewalk?

A. No. No.

Q. With regard to your handgun, you did carry a gun with you on May 4th?

A. Yes.

Q. For what purpose?

A. Protection.

Q. Did you have any legal permission or authority to carry a gun?

A. Not at the time.

Q. Did you have it concealed?

A. Yes.

Q. What was your understanding at that time about carrying a handgun?

A. Well, I thought at the time I was covered by bond from Security Guard and at a later date, I don't remember who told me, I found it was not covered up to that point.

Q. Did any police authority know you were carrying a weapon on May 4th, 1970?

A. Officially, no.

- Q. How about unofficially?
- A. Unofficially, I would say yes.
- Q. Who knew you had the gun?
- A. I don't think anybody specifically. I think it was a general knowledge.
- Q. Do you think Tom Kelly knew you had a gun?
- A. It was a good possibility, I would say yes.
- Q. Did you fire any weapon on May 4th, 1970?
- A. No.
- Q. So what happened then as you were walking between 3 and 47.
- A. Well, there was this, I remember this kid being down now, and then when I got to point 4, somebody that said, 'That is the pig,' or something like that and 'Stop him.'
- Q. That is when you took out your pistol and hit one of them up the side of the head?
- A. Right.
- A. Then what did you do?
- A. After this particular group had seen that I was armed, they backed off.
- Q. Then you started running?
- A. Yes.
- Q. Did somebody chase you?
- A. Yes.
- Q. Who chased you?
- A. People. I don't remember who they were.
- Q. When you ran down toward the Guard, did someone intercept you?
- A. Yes.

Q. Who intercepted you?

A. I think it was a policeman.

Q. From Kent State?

A. Yes.

Q. Did you know him?

A. In reading the statement, it said here, 'Bill Rice,' and I don't remember now that is who it was, but I guess it was.

Q. What did he do?

A. I don't remember.

Q. Did he take your gun?

A. Yes.

Q. Did he ask if you had fired it?

A. I don't remember.

Q. Did you tell him whether you had or had not fired it?

A. I don't remember.

Q. Did you tell him whether you had or had not fired it?

A. I don't believe so.

Q. Had it been fired?

A. No.

Q. Did anyone check to see whether it had a gunload of bullets?

A. I think they checked it right there on the spot.

Q. 'They' being who?

A. The policeman. They opened it up. I don't remember, but I think that is what they did.

- Q. All right, and when it was taken from you, were the cartridges examined there?
- A. To the best of my recollection, I would say, yes. I think he did pop open the gun. 94

The bulk of the available evidence indicates that Terry Norman did not fire the initial shot on May 4, 1970; whether he subsequently discharged his weapon is another question entirely, and not relevant to this inquiry. Joy Bishop Hubbard was the only witness who testified that Norman fired his pistol prior to the Guard's volley. Hubbard's testimony was rebutted by her two companions on the roof of Johnson Hall, Bruce Phillips and Patricia Rivera. Further, Officer Harold Rice, the only witness at either trial who even had actual possession of Norman's weapon on May 4, 1970, testified that that weapon had not been fired.

The conclusion that Terry Norman did not fire the first shot finds support from two areas. First, it should be recalled that Scott Robinson, the audio analyst, testified that the first shot recorded on the Strubbe tape was fired from an M-1. The second concerns Norman's location. Joy Bishop Hubbard placed him at approximately "point X" on the second map in the album supplement to this paper; it is impossible to tell from Norman's own testimony precisely where he claims he was located when the firing broke out. Joy Bishop Hubbard's testimony was rebutted by Patricia Rivera and Bruce Phillips, but assume for a moment that Hubbard was in fact correct; assume that Norman was at "point X" and that he fired his pistol into the air. This would mean that the troops, who were marching to the Commons then, turned away from their "sniper"

and fired into the Prentice Hall parking lot for no apparent reason. This, to say the least, sounds unlikely.

The sum of the existing information indicates that the National Guardsmen on Blanket Hill were not fired on by a sniper. This conclusion which is based on eyewitness testimony supported by analysis of the Strubbe tape, entails several lesser conclusions. First, there is no evidence that the object atop Taylor or Johnson Hall was a rifle. Second, there is no conclusive evidence that the hole in the metal sculpture was caused by a sniper's bullet. Third, there is no conclusive evidence that Donald MacKenzie was shot by a non-military weapon. Fourth, there is no evidence that the .22 caliber shell found by Colonel Fassinger on May 5, 1970, was ejected from a sniper's weapon. Fifth, Jeff Miller was not armed at the time he was fatally wounded. Sixth, there is no evidence that any civilian other than Terry Norman was armed when the shooting at Kent State commenced. Seventh, Terry Norman did not fire the initial shot on May 4, 1970.

Hence, the objective, historical evidence argues against the existence of a sniper. But, we must ask: is it not possible that the Guardsmen thought they were being fired upon, and acted accordingly. Once again, for the sake of argument, I will assume that the troops so believed. The issue then becomes one of procedure. How did the Guardsmen deal with and neutralize the danger with which they were confronted? Did they observe their own rules and regulations?

In sniper situations, both elements of the Rules of Engagemet

discussed in the previous section of this paper apply: firing must be a last resort, and it cannot be indiscriminate. As was demonstrated earlier, both of these provisions were violated by the Guardsmen at Kent State. But, in addition to these general firing guidelines, the Ohio National Guard employs a specific anti-sniper procedure. The Rules of Engagement states that "On coming under fire, the patrol take cover immediately. No fire is returned unless the sniper's location is definitely pinpointed, in which case, single aimed shots are fired as necessary."⁹⁵ Grant and Hill quote from another manual, though they do not specifically state which one:

Upon encountering sniper fire, all exposed personnel should immediately seek cover and notify all bystanders to clear the area or seek cover. Insure that sniper fire has, in fact, been encountered. Automobile backfires, firecrackers, light flashes, accidental weapon discharges, etc., may be misidentified as sniper fire. After verifying the sniper fire and attempting to locate its source, the task force commander should be notified as soon as possible so that he may dispatch a specially trained counter team to the site of the sniper.

Indiscriminate firing in return is prohibited. Personnel will remain under cover pending the arrival of the counter-sniper team. ⁹⁶

There is no available evidence to indicate that any of these procedures were followed on May 4, 1970. The Justice Department's summary of the FBI report states that:

At the time of the shooting, the National Guard clearly did not believe that they were being fired upon. No Guardsman claims he fell on the ground or took any other evasive action and all available photographs show the Guard at the

critical moments in a standing position and not seeking cover. In addition, no Guardsman claims he fired at a sniper or even that he fired in the direction from which he believed the sniper shot. 97

The KSU Commission on Violence concluded that "what chiefly weakens the hypothesis that the Guardsmen shot thinking themselves endangered by student snipers is that they did not fire in any direction where snipers might be presumed to have been." 98

The matter of sniper procedure was not emphasized at either U. S. v. Shafer, et al. or Krause, et al. v. Rhodes, et al. Only two Guardsmen testified about it, and both did so at the latter trial. Major Harry Jones testified as follows:

Q. All right. Are there special National Guard procedures for dealing with a sniper?

A. Yes.

Q. What are those procedures?

A. Basically, when you feel there is a sniper, of course the way you know is if you are fired upon, you would locate, identify, definitely identify that this person is the sniper.

When this is done, we have what we call "counter-sniper teams." This is a three-man team with a commissioned officer in charge of it.

He would direct, the commissioned officer of this team would direct that fire, only one individual would fire, and place fire on the sniper and try to eliminate him.

Q. That practice wasn't followed in this particular case at Kent State, was it?

A. Evidently it wasn't. 99

Lieutenant Dwight Cline testified as follows:

Q. Isn't it a fact that at least as of May, 1970, you understood in the event there was a suspected sniper, the procedure was to take cover and wait until an order is given to fire, isn't that right?

A. That's true.

Q. That certainly would come within the ambit of a procedure, would it not?

A. Yes, it could be.

Q. Well, do you recall seeing anybody taking cover at any time after these first two shots were heard by you?

A. No, I didn't.

Q. In fact, the only thing you recall, there was a barrage of shots from a number of persons that you observed, is that right?

A. That's true.¹⁰⁰

Thus, from the small amount of primary and secondary information available to the public, it appears that the sniper procedures were not followed. Photographs solidly establish that the troops did not seek cover from any sniper. There is no evidence that anti-sniper teams were requested by any Guardsmen. Further, it must be recalled that the firing was indiscriminate and that it was not employed as a last resort.

CONCLUSIONS

First, the objective, historical evidence indicates that the troops of G Troop and Company A were not fired upon by a sniper

on May 4, 1970. Second, even if the Guardsmen believed that such a sniper existed, they ignored their own regulations in dealing with that danger. None of the procedures outlined in the Rules of Engagement and other official manuals were followed by the National Guardsmen at Kent State University on May 4, 1970.

PART FOUR

C O N C L U S I O N

The ultimate question which this paper seeks to answer is: was the Kent State shooting justified? For my purposes, justification requires two elements. The first is the presence of mortal danger: a life-threatening mob of rioters or a sniper. The second is that the Guardsmen, in neutralizing that danger, followed the firing guidelines outlined in the Rules of Engagement for the Ohio National Guard.

The material presented in this paper supports thirteen sub-conclusions. First, on the matters of both the presence or absence of a mob and of the sniper, eyewitness testimony is too conflicting to draw any conclusions from as the following chart indicates.

Second, the existing photographic evidence does not support the assertion that such a mob did in fact threaten the lives of the members of G Troop and Company A on May 4, 1970. Analysis of the Abell film indicates that only five civilians were within 85 feet of the troops; of these five, only two were moving towards the Pagoda, and they were both walking. This conclusion is reinforced by still photographs, which show that the nearest students to the Guardsmen were located on the veranda of Taylor Hall. These students were separated from the troops by an iron fence, and in any case these civilians appear to have been no more than passive observers. Other than these students, Joseph Lewis was the closest person to the Guard. The Guardsmen had an almost unobstructed path back to the Commons, which was their destination.

Third, the contention that the troops were, when the shooting began, undergoing a barrage of rocks is not borne out by the existing photographic evidence. Further, the fact that none was seriously injured in this "barrage" seems to argue against its existence.

Fourth, the analysis of the Strubbe tape indicates that the first shot was fired by an M-1 rifle from the vicinity of the Pagoda.

Fifth, the object located on the roof of either Taylor or Johnson Halls was not, as some witnesses assumed, a sniper's rifle. It was, in fact, a camera equipped with a telephoto lens.

Sixth, Donald MacKenzie was probably not wounded by a non-military bullet. The evidence on this point is not, however, conclusive.

Seventh, there is no convincing evidence that the hole in the metal sculpture was caused by anything other than a Guard bullet. The fact that none of the individuals in the vicinity of the sculpture testified that the first shot on May 4, 1970 caused the hole in the sculpture, coupled with the fact that the matter was ignored at both U. S. v. Shafer, et al. and Krause, et al. v. Rhodes, et al., leads strength to the conclusion that the hole was caused by a Guardsmen's bullet.

Eighth, there is no conclusive evidence that the spent .22 cartridge found by Colonel Fassinger on May 5, 1970, came from a sniper's weapon.

Ninth, Jeffry Miller was not armed at the time of his death.

Tenth, Terry Norman did not fire the initial shot on May 4, 1970.

Eleventh, the shooting was not employed as a last resort.

Twelveth, the shooting was indiscriminate.

Thirteenth, the sniper procedure of the Ohio National Guard was not followed.

Thus, within the limits of my stipulative definition of the term, the shooting at Kent State was not justified. There was no life-threatening mob. There was no sniper. The firing procedures were not followed.

Pledge,
Michael Allen Yello

STATISTICAL TABULATION OF TWO RECURRING QUESTIONS
AS ANSWERED BY WITNESSES IN THE FOREGOING TESTIMONY

		<u>GUARDSMEN</u>		<u>STUDENTS</u>	<u>OTHERS</u>		<u>TOTAL</u>
		<u>Officers</u>	<u>Others</u>				
Were the lives of the Guardsmen endangered by a mob of riotous civil- ians?	Yes	1	17	0	3	.....	21
	No	2	9	28	9	.....	48
	Indet-	3	1	3	4	.....	11
	erminate						
Was there a sniper?	Yes	2	4	0	1	.....	7
	No	4	5	18	4	.....	31
	Indet-	1	0	0	0	.....	1
	erminate						

CHRONOLOGY

The purpose of this section is to place the 12.54 second burst of gunfire at Kent State University into a context of events. I have attempted here to relate only those aspects of the period from April 30 to May 4, 1970 which are generally agreed upon by the sources cited in the Introduction of this paper.

Thursday, April 30, 1970 - President Nixon announces Cambodian invasion.

Friday, May 1, 1970

Dusk - Crowd begins to gather along Water Street, a street in the business district of Kent. The crowd is generally well-behaved.

10:15 - Someone sets off a string of firecrackers, which excites the crowd. A youth throws a beer can at a passing car.

10:42 - A police car arrives only to be hit with a beer bottle.

10:55 - An elderly man and his wife drive along Water Street are attacked by the crowd. Their car is pelted with beer bottles and all its windows are smashed.

11:00 - Police back-up assistance is requested.

11:20 - All off-duty Kent policemen are put on alert.

11:30 - A trash can is emptied in the middle of the street and its contents ignited. A small tool shed is also set ablaze.

11:37 - Sergeant Joe Myers of the Kent police broadcasts a Signal 25. {This meant that every available policeman was to report and that assistance was requested from neighboring communities.}

11:50 - The crowd, for no apparent reason, leaves the bonfire and gravitates toward the center of town. Someone sends a beer bottle through a store window. Others get the idea and begin heaving whatever they have through the store-front windows.

11:55 - Mayor LeRoy Satrom arrives on the scene.

12:10 - Riot police make their first contact with the crowd at the intersection of Main and Water Streets.

12:17 - Police order all bars closed. This move was a mistake, since it turned even more students out on the street.

12:30 - Satrom declares a state of emergency.

12:35 - The bonfire on Water Street is extinguished by the Kent fire department.

12:47 - Mayor Satrom calls Governor Rhodes in Columbus and tells him that the Guard might be needed to restore order

- 12:55 - Two contingents of police begin a maneuver to "sweep" the rioters back to the campus.
- 12:57 - Satrom "reads the riot act".
- 1:06 - Firemen call headquarters and report that "All fires extinguished. All clear on Water Street."
- 1:42 - Tear gas used for the first time.
- 2:10 - A brick is hurled through a window at the ROTC Building. An arrest is made.
- 2:27 - Police report that students have returned to campus.
- 3:00 - A young officer in the Ohio National Guard drives through Kent, on the supposition that he may be needed.

Saturday, May 2, 1970 - Dusk

- 7:00 - A small crowd gathers at the Victory Bell.
- 7:30 - Ohio State Patrol alerted. The crowd has swelled to about 6,000.
- 7:36 - A man circulates about the crowd warning photographers not to take pictures.
- 8:00 - Sixty police are dispatched from Portage County, but they would arrive too late to do any good.
- 8:15 - Students pelt the ROTC Building with rocks and attempt to effect a battering ram to collapse the door of the building.
- 8:20 - Two railroad flares are hurled into the ROTC Building.
- 8:24 - Another flare is thrown in the building, setting a pair of curtains afire.
- 8:28 - Two males break a window and, in full view of hundreds of witnesses, throw two flares into the building. In two minutes the ROTC Building is burning in earnest.
- 8:35 - Mayor Satrom, advised of new troubles on the campus, formally requests the National Guard. 400 officers and men, under the immediate command of General Robert Canterbury are dispatched to Kent State University.
- 8:49 - The Kent fire department receives word of the fire and

dispatches Truck No. 3.

- 8:53 - The fire truck arrives at the ROTC Building, but civilians so interfere with efforts to extinguish the blaze that at 9:15 the firemen are forced to withdraw.
- 9:17 - For no apparent reason, the fire goes out.
- 9:20 - Ten County Police and two units of Campus Police arrive.
- 9:27 - Police use gas to drive the crowd away from the now-smouldering building.
- 9:45 - In key with other odd events of the evening, the ROTC Building suddenly begins burning again. Soon the flames burst through the roof. {By this time the Guard is on the scene.}
- 10:10 - Firemen again venture back on campus, this time with police protection.
- 11:55 - The area is cleared.

As Saturday drew to a close the Kent campus was in a state of occupation. There were men in full combat dress, with fixed bayonets, standing guard on her lawns. Jeeps patrolled the grounds all night, their spotlights scanning each building in turn. Helicopters roared across the sky sweeping down to a few feet above the roofs.

"It gave you the feeling that you were living in a police state. It was 1984 and George Orwell was in the background, smiling." 1

To the surprise of many students, the Guard was still on the campus as the sun came up on Sunday. The whole atmosphere was relaxed. More than a hundred witnesses have termed this day as like a "carnival".

By noon, the burnt out ROTC Building had been roped off and had become a center of attention. Traffic on the major arteries was backed up for miles as the sightseers streamed in.

Jeff Sallot, a resident of Portage County, was one who went to see the hulk that once was ROTC. "What a lovely day it was, real springtime. All the co-eds were out for the first time in their spring dresses and they made a great hit with the Guardsmen. There was a lot of flirting. No fear, no animosity. The bad language of the former night was forgotten." 2

Roman Tymchyschn, wandering through the crowd, flashed one of the Guardsmen a peace sign, and the Guardsman winked, opened his

tunic and displayed a T-shirt bearing a peace symbol.

At about 2:00PM an attractive woman placed a yellow flower in one of the Guardsmen's guns. As she deposited her flower she said, "Flowers are better than bullets." The girl's name was Allison Krause, and about twenty-two hours later she would be lying in about the same spot bleeding to death from a gunshot wound.

At 7:45 a Guardsman found a rope and two bottles of gasoline near the University police headquarters. Fifteen minutes later another cache of firebomb materials was found on the roof of the Administration Building.

8:45 - Curfew is moved ahead from 1:00AM to 9:00PM, fifteen minutes away.

9:05 - A crowd of students begin a march from the Victory Bell to the home of the Kent State President, Dr. Sassic White.

9:15 Guard tear-gasses the crowd after it fails to disperse when ordered to do so. The students regroup at the Commons.

9:29 - About 200 students decide to "invade" the town. Cheering and singing they sweep down Main Street, but at 9:33PM they stop abruptly. Barring their way was an armored personnel carrier. Silence falls until at 9:35 the tank wheels off into a side street, thus ending the confrontation.

9:38 - The students are informed that they are all subject to arrest for curfew violation. The group hesitates but then quietly heads back toward campus.

9:42 - Retreating students discover a group of girls and men defiantly sitting in the middle of the Main and Lincoln intersection and immediately join them. The number of civilians involved is not certain, but 700 seems a fair estimate. The incident lasted eighty minutes.

9:45 - All units of the Guard are in the position they would occupy until 11:00. The 107th, under Captain Ronald Snyder, lines Lincoln Street, linking on both sides with campus police. The students are thus hemmed in on three sides, the fourth side being the road leading back to the campus.

9:50 - The battle line is drawn. Jeeps dart back and forth. Orders are shouted back and forth. Overhead the omnipresent helicopters sweep back and forth, flashing their anti-riot lights on rooftops to flush out any would-be snipers.

- 10:10 - The civilians send a delegation of three over to the Guards' position. They demand to see President White.
- 10:45 - A student, using a police bullhorn, begins reading off a list of demands his committee proposes to press upon White:
- a. ROTC be removed from campus.
 - b. Total amnesty be granted for those involved with burning ROTC.
 - c. All National Guard be off campus by midnight.
 - d. The curfew be lifted immediately.
 - e. Tuition for all students be lowered.
- 10:46 - The student delegation is told that they will not be allowed to see President White. The crowd begins to get ugly. The Guard disperse tear gas liberally and gets brick and pieces of concrete in return.
- 11:00 - The Guard begins "cleaning up" the street. The students are ordered to disperse. During the dispersal, the Guard bayonets seven students, two of whom are hospitalized.
- 11:40 - The campus is considered "secure" by General Canterbury.

After the first period of classes was over, students began collecting on the Commons. The question arises--did they have the right to congregate there on this day? A state of emergency had been declared by Mayor Satrom, presumably outlawing any gatherings. But testimony from students is overwhelming that they believed their campus to be operating as usual. A rally for Monday had been openly publicized all during the weekend. The rally was, in fact, cancelled but few students were made aware of this fact. At 11:45 General Canterbury was amazed to see large groups of students converging, as if the rally were still authorized. He did not know that classes had just let out and it was normal

for students to go to their next class by way of the Commons. Canterbury ordered that the students be dispersed.

At 11:48 someone began ringing the Victory Bell. The bell kept ringing for fifteen minutes, assembling the students and keeping them agitated.

At 11:48 Campus Security Officer Harold Rice read the riot act over a bullhorn. Unfortunately, he was too far away from the main body of the crowd to be effective. Realizing this, Rice commandeered a jeep and wove his way through the crowd, shouting through the bullhorn, "Attention! This is an order. Disperse. Leave this area immediately." So that all students could be properly warned, Rice made three circuits with the jeep.

At 11:59 the order "load and lock" was given to all Guardsmen. One minute later General Canterbury moved his men out to disperse the crowd. The total Guard force numbered 113, disposed as follows: three senior officers, Brigadier General Robert H. Canterbury, Lieutenant Colonel Charles Fassinger, Major Harry D. Jones in command of three units of troops arranged in this order. On the left, nearest to the tennis courts, Charlie Company, First Battalion, 145th Infantry, consisting of two officers {Captain Ronald Snyder and Lieutenant Dale Heatherneck} and 34 enlisted men}. In the center, headed for Taylor Hall, was G Troop, Second Squadron, 107th Armored Cavalry, consisting of two officers {Captain Raymond S. Srp and Lieutenant Stevenson} and 16 enlisted men. On the right flank, headed for Johnson Hall, was Alpha Company, consisting of three officers {Captain John D. Martin, Lieu-

tenants Dwight Cline and Harry Fallon} and 51 enlisted men. Two additional members attached themselves to Alpha Company at the last minute, bringing the total contingent to 10 officers and 103 enlisted men.

General Canterbury's plan was to sweep the Commons to the southwest, driving all students across the crest of Blanket Hill, keeping Taylor Hall on their left and the Pagoda on the right. The troops would then push the students down the far slope of the hill towards the practice football field.

The troops moved out at 12:01, by this time making heavy use of tear gas. A sudden cross wind spread it across the Taylor Hall hill. Several students picked up the hot canisters and hurled them back into the ranks of the Guard.

At 12:02 Charlie Company detached itself from the main body of troops and moved off to the left. They fired more tear gas and at 12:03 Captain Snyder formed his line between Prentice Hall and Taylor Hall. He held that position for twenty minutes until after the shooting occurred.

As Snyder's Company was reaching its final position, Captain Srp's unit of eighteen soldiers was just reaching the Pagoda. Students were hurling bricks and chunks of concrete at the Guardsmen, but few of these found their targets. Launched with the missiles, however, were curses, obscenities and fatal challenges, many of which did hit the mark.

The Guard foraged forward, and literally painted themselves into a corner. Along the eastern end of the practice football field ran a sturdy six-foot chain link fence, which made a sharp

left turn to the west. The National Guard, 68 enlisted men and 8 officers, were penned in on three sides by fence with no alternative but retreat.

When the students saw that the Guard had trapped itself, they increased their barrage of rocks and canisters.

Later, the Guard would claim to have been surrounded at this point in time. To the east there was only one student. To the south there was no one for a hundred yards. And to the west toward the Pagoda, students had not reformed.

What happened next is unclear. Several members of the Guard dropped to the kneeling firing position, their muzzles pointing at the heckling students. They held their fire while the officers conferred.

At 12:18 Colonel Fassinger issued the order, "Regroup at ROTC." The contingent formed up in a "V" formation and prepared to march.

At 12:22 the unit left the fence where they had suffered so much humiliation. The march from the practice field to the Pagoda took between six and ten minutes. At approximately 12:24, some Guardsmen on the trailing right flank suddenly stopped, wheeled 135 degrees to the right, facing the students who had collected on the south side of Taylor Hall, and fired.

The shooting left four students dead and nine wounded, one of the latter having a shattered vertebrae.

12:25 - The firing ceased, largely thanks to the efforts of Major Jones, who beat his troops over the head with his swagger stick, pleading with them to stop.

12:29 - Frantic officers did their best to restore order as the troops marched back to ROTC to surrender weapons for registry and inspection.

Students who had just seen their fellow classmates torn apart by armor-piercing shells that could bring down a bear at a mile-and-a-half, followed the Guard down the hill and took up a menacing position. From the crowd rose the defiant cry, "Let them splatter us all."

From the tapes of the reporters there is little doubt that the students were ready to charge the Guard. Only the efforts of three professors averted this catastrophe. Seymour Baron, Mike Lunine and Glenn Frank approached the Guard and sought out General Canterbury. Canterbury refused to listen to them, so Baron went back to where the students were massing. He commandeered two bullhorns and begged for order.

BARON - I'm scared to death that somebody else is going to get shot and killed.

VOICE - Man, you take Martin Luther King. He wouldn't be scared.

BARON - Martin Luther King would not have stayed. Martin Luther King was a man who understood that to win you must live. If you die, you cannot win anything. You must live to win.

VOICE - Let them splatter us right now.

BARON - There are too many of you who are too damned good to die in this stinking field here.

Glenn Frank then took over, his voice deep and choking with emotion: "I don't care if you've never listened to anyone before in your lives. I am begging you right now. If you don't disperse right now they're going to move in, and it can only be a slaughter. Would you please listen to me?"

The students were affected by the anguish in his voice. They began to move away in small groups. The second slaughter was averted.

A half-hour after the shootings, the college was closed down and students began a massive exodus.

NOTES

INTRODUCTION

¹The President's Commission on Campus Unrest, Report {Washington, D. C.: U. S. Government Printing Office, 1970}, p. 280. Hereafter, this Report shall be referred to as the Scranton Report}.

²Scranton Report, p. 283.

³Scranton Report, pp. 281-282

⁴General Del Corso testified before the Scranton Commission on August 19, 1970. I cannot cite precise transcript page numbers because all transcripts that I have been able to obtain of these hearings have been oral. The Kent State University archives has tape recordings of the hearings, and I was allowed to reproduce those eighteen hours of hearings on my own tape. Hereafter, this "transcript" will be referred to as "Scranton hearings".

⁵Scranton Report, p. 281.

⁶That procedure may, in its broadest form, be found in OPLAN 2 of the Ohio National Guard's regulations, which is reproduced in the Scranton Report {p. 283}. It shall be detailed in Part Three of this paper.

⁷James Michener, Kent State {N.Y.: Random House, 1971}, p. 368.

⁸Jean Felter made this statement at U. S. v. Shafer, et al., on September 24, 1974. Transcript page numbers will not be cited in notations relating to either the civil or criminal trials. This is the case for two reasons. First, the transcript page numbers for Krause, et al. v. Rhodes, et al., are not uniform: different transcripts were typed and arranged differently. For example, a single page in the transcript of that case which is located in the Kent State University Archives might look different from the same numbered page in the transcript located in the Federal Courthouse in Cleveland {where the trial took place}. The information contained in both transcripts is the same, but the page numbers are different. Second, the citation of the date on which the witness testified is alone sufficient to locate my citation within the original transcript. The transcript of U. S. v. Shafer, et al., may be found in the records of the Cleveland Federal Courthouse under index number CR-74-165. The transcript of Krause, et al. v. Rhodes, et al. may be found in the Archives of Kent State University under catalogue number LD/4191/.072/K7X.

⁹The full transcript of General Canterbury's press conference is available from the archives of radio station WKSU. It is also available from the Kent State University Archives. Papers of Robert

Urban, Box 2, Folder 21.

¹⁰Testimony of Martin Hale at U. S. v. Shafer, et al., September 24, 1974.

¹¹U. S. v. Shafer, et al., September 24, 1974.

¹²I. F. Stone, The Killings at Kent State. (N.Y.: New York Review of Books, 1971), pp. 60-101.

¹³Stone, p. 87.

¹⁴Stone, p. 89

¹⁵Scranton Report, p. 289

¹⁶Brown testified at U. S. v. Shafer, et al., on September 23, 1974. The full text of the Report of the Ohio Special Grand Jury was reprinted in Ed Grant and Mike Hill's I Was There (Lima, Ohio: C.S.S. Publishing Company, 1974), pp. 116-128. The original Report may be found in the Portage County Courthouse. Xerox copies may be obtained from the Kent State University archives. For the sake of convenience, citations in this paper refer to the Grant and Hill book.

¹⁷Grant and Hill, pp. 121-122.

¹⁸For example, Robert Peabody's "Report of the Special State Grand Jury: An Analysis." This document may be found in the Kent State University Archives, papers of Robert Urban, Box 29, Folder 54.

¹⁹The official name of this document is "An Analysis of the Ohio Grand Jury Report," and it was prepared by the Ad Hoc Committee of the Kent State University Faculty Senate. Under the auspices of D. Roy Heisey, Kenneth Calkins and Daniel Jones. It may be found in the Kent State University Archives, papers of Robert Urban, Box 29, Folder 36.

²⁰Michener, p. 531.

²¹Scranton Report, p. 289

²²Scranton Report, pp. 270-272.

²³Scranton Report, pp. 279-280.

²⁴Peter Davies, The Truth About Kent State (NY: Doubleday, 1973), pp. 143-144.

²⁵The Ohio National Guard was represented at the Scranton hearings by Generals Canterbury and Del Corso. The latter was not

present at Kent State University on May 4, 1970.

²⁶"Minority Report of the KSU Commission on Violence," {4 volumes} may be found in the Kent State University Archives. The Commission's working papers and raw testimony are not open for public inspection at the present time. Hereafter this document shall be referred to as the "Minority Report".

²⁷"Poll Shows Little Interest in May 4th," The Daily Kent Stater, May 2, 1970, p. 1.

²⁸Michener, pp. 409-410.

²⁹Michener, p. 371.

³⁰Michener, p. 543. He writes that he was "not able to interrogate specific Guardsmen who fired the weapons."

³¹Michener, p. 558.

³²He does mention, at one point, that twelve students were wounded on May 4, 1970. Yet he names only six.

³³Kahler so testified at Krause, et al. v. Rhodes, et al., on June 4, 1975.

³⁴Canfora so testified at Krause, et al. v. Rhodes, et al., on June 19, 1975.

³⁵Carol Moore and Ray Heisey, "Not a Great Deal of Error . . ." {Unpublished}. This critique is available only through the authors, both of whom are professors at Kent State University.

³⁶Moore and Heisey, pp. 5-6.

³⁷Moore and Heisey, p. 4. For example, John Filo, Alfred Hitchcock, Robert Bloch, Carl Moore, Steve Sharoff, Richard Schreiber, Charles Mondonio and Harold Walker all charge Michener with distortion and/or inaccuracy.

³⁸Moore and Heisey, p. 11. For example, Candy and Rick Erickson, Arthur Krause and Robert Matson claim that they were never interviewed by Michener's research team.

³⁹Moore and Heisey, p. 11. For example, Vclav Koutnik and Glen Kruger so charge Michener.

⁴⁰Details of this trial may be obtained from the Office of John P. Adams, Director, Department of Law, Justice and Community Relations of the Board of Church and Society of the United Methodist Church, 100 Maryland Avenue, Washington, D. C. 20002.

⁴¹Davies, p. 48.

⁴²Davies, p. 158. Major Simons testified at Krause, et al. v. Rhodes, et al., on July 21, 1975, that he was located near the Victory Bell when the firing commenced.

⁴³Joe Eszterhas and Michael Roberts, 13 Second: Confrontation at Kent State (NY: Dodd, Mead, 1970).

⁴⁴Eszterhas and Roberts, p. 215.

⁴⁵Eszterhas and Roberts, pp. 14 and 42.

⁴⁶Eszterhas and Roberts, pp. 1-2.

⁴⁷Eszterhas and Roberts, p. 166.

⁴⁸Stone, p. 93

⁴⁹Eszterhas and Roberts, p. 157.

⁵⁰"Kent State: The Search for Understanding," Akron Beacon-Journal, May 24, 1970, p. 18.

⁵¹Ottavio Casale and Louis Pascoff (eds.), The Kent Affair (Boston: Houghton Mifflin, 1971).

⁵²Phillip Tomkins and Elaine Anderson, Communications Crisis at Kent State, (NY: College Notes and Texts, 1971).

⁵³Steward Taylor, Violence at Kent: The Student's Perspective (NY: Gordon and Breach, 1971).

⁵⁴Bill Warren (ed.), The Middle of the Country (NY: Avon, 1970).

⁵⁵Warren, pp. 17-18.

⁵⁶Only two contributors to the book, Rita Rubin and Bill Rubenstein, specifically state that they were eyewitnesses to the shooting itself.

⁵⁷They write that "There were numerous intensive investigations subsequent to this event [the shootings]. Many have been quoted widely as saying 'Those shootings were unnecessary, unwarranted and inexcusable.' But one report in particular has been conspicuously absent from these reviews: the conclusions drawn by the Ohio State Grand Jury. The Grand Jury has always been the accepted legal means by which indictments are rendered. The exclusive responsibility and purpose of a Grand Jury is to weigh without bias any and all facts presented to them." Grant and Hill, p. 116.

⁵⁸ Stone, p. 27.

⁵⁹ Scranton Report, pp. 254-255.

⁶⁰ Herman Hesse, Magister Ludi (NY: Random House, 1946), p. 264.

WAS THERE A LIFE-THREATENING MOB?

¹ General Canterbury so testified at Krause, et al. v. Rhodes, et al., on July 23, 1975.

² Scranton hearings, August 20, 1970.

³ Krause, et al. v. Rhodes, et al., July 23, 1975.

⁴ Krause, et al. v. Rhodes, et al., July 23, 1975.

⁵ Krause, et al. v. Rhodes, et al., June 25, 1975.

⁶ Krause, et al. v. Rhodes, et al., June 27, 1975.

⁷ Krause, et al. v. Rhodes, et al., June 27, 1975.

⁸ Krause, et al. v. Rhodes, et al., June 12, 1975.

⁹ Krause, et al. v. Rhodes, et al., June 16, 1975.

¹⁰ Krause, et al. v. Rhodes, et al., July 7, 1975.

¹¹ Krause, et al. v. Rhodes, et al., August 11, 1975.

¹² Krause, et al. v. Rhodes, et al., July 9, 1975.

¹³ Krause, et al. v. Rhodes, et al., July 10, 1975.

¹⁴ Krause, et al. v. Rhodes, et al., July 18, 1975.

¹⁵ Krause, et al. v. Rhodes, et al., July 18, 1975.

¹⁶ Krause, et al. v. Rhodes, et al., August 13, 1975.

¹⁷ Krause, et al. v. Rhodes, et al., July 9, 1975.

¹⁸ Krause, et al. v. Rhodes, et al., July 6, 1975.

¹⁹ Krause, et al. v. Rhodes, et al., June 9, 1975.

²⁰ Krause, et al. v. Rhodes, et al., June 10, 1975.

- ²¹Krause, et al. v. Rhodes, et al., July 8, 1975.
- ²²Krause, et al. v. Rhodes, et al., July 7, 1975.
- ²³Krause, et al. v. Rhodes, et al., July 3, 1975.
- ²⁴Krause, et al. v. Rhodes, et al., July 2, 1975.
- ²⁵Krause, et al. v. Rhodes, et al., June 18, 1975.
- ²⁶Krause, et al. v. Rhodes, et al., August 18, 1975.
- ²⁷Krause, et al. v. Rhodes, et al., August 18, 1975.
- ²⁸Krause, et al. v. Rhodes, et al., July 10, 1975.
- ²⁹Stone, p. 84.
- ³⁰Michener, p. 371.
- ³¹Krause, et al. v. Rhodes, et al., June 26, 1975.
- ³²Krause, et al. v. Rhodes, et al., June 30, 1975.
- ³³Krause, et al. v. Rhodes, et al., June 10, 1975.
- ³⁴Krause, et al. v. Rhodes, et al., August 11, 1975.
- ³⁵Michener, p. 370.
- ³⁶Michener, p. 370.
- ³⁷"Three Are Killed at Kent State - Two Guardsmen, Youth Are Victims," Cleveland Press, May 4, 1970, Sec. 1, p. 1.
- ³⁸Minority Report, Vol. 4, p. 229.
- ³⁹Minority Report, Vol. 4, pp. 230-231.
- ⁴⁰Minority Report, Vol. 4, p. 232.
- ⁴¹Minority Report, Vol. 4, p. 233.
- ⁴²Minority Report, Vol. 4, p. 233.
- ⁴³Minority Report, Vol. 4, p. 234.
- ⁴⁴Minority Report, Vol. 4, p. 234.
- ⁴⁵Minority Report, Vol. 4, p. 234.

- ⁴⁶ Minority Report, Vol. 4, pp. 234-235.
- ⁴⁷ Minority Report, Vol. 4, p. 235.
- ⁴⁸ Michener, pp. 370-371.
- ⁴⁹ U. S. v. Shafer, et al., November 6, 1974.
- ⁵⁰ Stone, p. 97.
- ⁵¹ Krause, et al. v. Rhodes, et al., June 4, 1975.
- ⁵² Stone, p. 97.
- ⁵³ Krause, et al. v. Rhodes, et al., June 24, 1975.
- ⁵⁴ Stone, p. 97.
- ⁵⁵ Krause, et al. v. Rhodes, et al., June 18, 1975.
- ⁵⁶ Krause, et al. v. Rhodes, et al., June 19, 1975.
- ⁵⁷ Stone, p. 97.
- ⁵⁸ Krause, et al. v. Rhodes, et al., June 23, 1975.
- ⁵⁹ U. S. v. Shafer, et al., November 6, 1974.
- ⁶⁰ Stone, p. 98.
- ⁶¹ U. S. v. Shafer, et al., November 1, 1974.
- ⁶² Stone, p. 98.
- ⁶³ Krause, et al. v. Rhodes, et al., June 19, 1975.
- ⁶⁴ Stone, p. 98.
- ⁶⁵ Scranton hearings, August 21, 1970.
- ⁶⁶ Stone, p. 98.
- ⁶⁷ U. S. v. Shafer, et al., November 1, 1974.
- ⁶⁸ U. S. v. Shafer, et al., November 6, 1974.
- ⁶⁹ U. S. v. Shafer, et al., October 31, 1974.
- ⁷⁰ Krause, et al. v. Rhodes, et al., May 30, 1975.
- ⁷¹ Krause, et al. v. Rhodes, et al., June 3, 1975.

- ⁷² Krause, et al. v. Rhodes, et al., July 8, 1975.
- ⁷³ Michener, p. 377.
- ⁷⁴ Scranton hearings, August 20, 1970.
- ⁷⁵ Krause, et al. v. Rhodes, et al., May 28, 1975.
- ⁷⁶ U. S. v. Shafer, et al., November 6, 1974.
- ⁷⁷ U. S. v. Shafer, et al., October 31, 1974.
- ⁷⁸ U. S. v. Shafer, et al., November 5, 1974.
- ⁷⁹ U. S. v. Shafer, et al., November 1, 1974.
- ⁸⁰ U. S. v. Shafer, et al., November 6, 1974.
- ⁸¹ U. S. v. Shafer, et al., November 6, 1974.
- ⁸² U. S. v. Shafer, et al., November 5, 1974.
- ⁸³ U. S. v. Shafer, et al., November 1, 1974.
- ⁸⁴ Krause, et al. v. Rhodes, et al., June 4, 1975.
- ⁸⁵ Scranton hearings, August 21, 1970.
- ⁸⁶ Krause, et al. v. Rhodes, et al., August 20, 1975.
- ⁸⁷ Krause, et al. v. Rhodes, et al., July 9, 1975.
- ⁸⁸ Scranton hearings, August 20, 1970.
- ⁸⁹ Kruase, et al. v. Rhodes, et al., July 21, 1975.
- ⁹⁰ Krause, et al. v. Rhodes, et al., August 12, 1975.
- ⁹¹ Krause, et al. v. Rhodes, et al., June 16, 1975.
- ⁹² Krause, et al. v. Rhodes, et al., June 4, 1975.
- ⁹³ Krause, et al. v. Rhodes, et al., June 6, 1975.
- ⁹⁴ Scranton hearings, August 21, 1970.
- ⁹⁵ Scranton hearings, August 21, 1970.
- ⁹⁶ Krause, et al. v. Rhodes, et al., June 24, 1975.
- ⁹⁷ Scranton hearings, August 19, 1970.

- 98 Michener, p. 367.
- 99 Krause, et al. v. Rhodes, et al., June 11, 1975.
- 100 Krause, et al. v. Rhodes, et al., July 5, 1975.
- 101 Krause, et al. v. Rhodes, et al., June 16, 1975.
- 102 Krause, et al. v. Rhodes, et al., July 5, 1975.
- 103 Krause, et al. v. Rhodes, et al., July 17, 1975.
- 104 Krause, et al. v. Rhodes, et al., July 29, 1975.
- 105 Krause, et al. v. Rhodes, et al., July 14, 1975.
- 106 Krause, et al. v. Rhodes, et al., July 16, 1975.
- 107 Michener, p. 368.
- 108 Scranton Report, p. 259.
- 109 Stone, p. 89.
- 110 Michener, p. 340.
- 111 Scranton Report, p. 261.
- 112 General Canterbury so testified at Krause, et al. v. Rhodes, et al., on July 23, 1975.
- 113 Grant and Hill, pp. 77-78.
- 114 Michener, p. 344.
- 115 Krause, et al. v. Rhodes, et al., June 25, 1975.
- 116 Krause, et al. v. Rhodes, et al., July 7, 1975.
- 117 Krause, et al. v. Rhodes, et al., August 13, 1975.
- 118 Krause, et al. v. Rhodes, et al., June 16, 1975.
- 119 Such as Stone and Davies.
- 120 Stone, pp. 83-85.
- 121 Actually, both Davies and Stone, the two primary proponents of the theory that the Guardsmen fabricated their self-defense claims after the fact, published their books on Kent State several years before Krause, et al. v. Rhodes, et al. ever came to trial.

But Captain Snyder's testimony at that proceeding does lend credence to the arguments of Davies and Stone.

¹²² Krause, et al. v. Rhodes, et al., June 30, 1975.

¹²³ Krause, et al. v. Rhodes, et al., June 30, 1975.

¹²⁴ Krause, et al. v. Rhodes, et al., June 30, 1975.

¹²⁵ Krause, et al. v. Rhodes, et al., June 30, 1975.

¹²⁶ Krause, et al. v. Rhodes, et al., August 11, 1975.

¹²⁷ Scranton Report, p. 285.

¹²⁸ Minority Report, p. **200**.

¹²⁹ Michener, p. 391.

¹³⁰ Krause, et al. v. Rhodes, et al., August 14, 1975.

¹³¹ U. S. v. Shafer, et al., November 6, 1974.

¹³² Krause, et al. v. Rhodes, et al., August 14, 1975.

¹³³ Michener, p. 344.

¹³⁴ Stone, p. 87.

¹³⁵ Scranton Report, p. 270.

¹³⁶ Michener, p. 368.

¹³⁷ General Canterbury may be identified in these photographs because he was the only individual in the ranks of the Guardsmen who was wearing a business suit. Further, his gas mask was worn atop his head. Major Jones may be identified by his soft fatigue cap and his baton. Sergeant Pryor by his shoulder strap and a .45 pistol.

¹³⁸ Scranton Report, p. 391.

¹³⁹ U. S. v. Shafer, et al., October 31, 1974.

¹⁴⁰ According to architect's drawings in the Kent State University Archives.

¹⁴¹ Scranton Report, p. 401.

¹⁴² U. S. v. Shafer, et al., November 6, 1974.

¹⁴³ Stone, p. 87.

144 Michener, p. 376.

145 Stone, pp. 96-99.

146 Davies, p. 55.

147 Except for the students located on the Taylor Hall Veranda.

148 Scranton hearings, August 19, 1970.

149 Krause, et al. v. Rhodes, et al., June 4, 1975.

150 Krause, et al. v. Rhodes, et al., August 14, 1975.

151 Scranton hearings, August 21, 1970.

152 Stone, p. 87.

153 Krause, et al. v. Rhodes, et al., July 21, 1975.

154 Krause, et al. v. Rhodes, et al., July 29, 1975.

155 Stone, p. 87.

156 Major Harry Jones {June 30, 1975}, Colonel Charles Fasting {July 16, 1975}, SP4 Russell Repp {August 13, 1975}, SP4 Lawrence Shafer {June 4, 1975}, SP4 James Pierce {June 25, 1970}, SP4 Ralph Zoller {July 9, 1975} and SP4 James McGee {July 7, 1975}.

157 Michener, p. 371.

158 Scranton Report, p. 281.

159 Scranton hearings, p. 281.

160 Scranton Report, p. 281.

161 Stone, p. 82.

162 Krause, et al. v. Rhodes, et al., August 13, 1975.

163 Krause, et al. v. Rhodes, et al., July 10, 1975.

164 Krause, et al. v. Rhodes, et al., June 26, 1975.

165 Scranton Report, p. 281.

166 Krause, et al. v. Rhodes, et al., July 22, 1975.

167 Stone, p. 80.

- 166 Krause, et al. v. Rhodes, et al., June 25, 1975.
- 169 Krause, et al. v. Rhodes, et al., June 4, 1975.
- 170 Krause, et al. v. Rhodes, et al., June 16, 1975.
- 171 Krause, et al. v. Rhodes, et al., July 7, 1975.
- 172 Krause, et al. v. Rhodes, et al., August 13, 1975.
- 173 Krause, et al. v. Rhodes, et al., July 18, 1975.
- 174 Krause, et al. v. Rhodes, et al., August 14, 1975.
- 175 Krause, et al. v. Rhodes, et al., July 9, 1975.
- 176 Krause, et al. v. Rhodes, et al., July 6, 1975.
- 177 Krause, et al. v. Rhodes, et al., June 9, 1975.
- 178 Krause, et al. v. Rhodes, et al., July 8, 1974.
- 179 Krause, et al. v. Rhodes, et al., July 7, 1975.
- 180 Krause, et al. v. Rhodes, et al., June 16, 1975.
- 181 Krause, et al. v. Rhodes, et al., July 5, 1975.
- 182 Krause, et al. v. Rhodes, et al., August 14, 1975.
- 183 Krause, et al. v. Rhodes, et al., July 2, 1975.
- 184 Stone, p. 99.
- 185 Krause, et al. v. Rhodes, et al., June 4, 1975.
- 186 Krause, et al. v. Rhodes, et al., June 25, 1975.
- 187 Krause, et al. v. Rhodes, et al., July 9, 1975.
- 188 Krause, et al. v. Rhodes, et al., June 12, 1975.
- 189 Krause, et al. v. Rhodes, et al., June 30, 1975.
- 190 Krause, et al. v. Rhodes, et al., July 22, 1975.
- 191 Stone, pp. 96-99.
- 192 Stone, p. 99.
- 193 Krause, et al. v. Rhodes, et al., June 4, 1975.

- 194 Stone, p. 94.
- 195 Krause, et al. v. Rhodes, et al., June 4, 1975.
- 196 U. S. v. Shafer, et al., November 6, 1974.
- 197 Krause, et al. v. Rhodes, et al., June 19, 1975.
- 198 Michener, pp. 392-393.
- 199 Stone, p. 98.
- 200 Stone, p. 98.
- 201 Krause, et al. v. Rhodes, et al., June 23, 1975.
- 202 Michener, p. 397.
- 203 U. S. v. Shafer, et al., November 1, 1974.
- 204 Stone, p. 99.
- 205 Michener, p. 395.
- 206 U. S. v. Shafer, et al., November 6, 1974.
- 207 Stone, p. 99.
- 208 Michener, pp. 395-396.
- 209 Stone, p. 99.
- 210 Stone, p. 99.
- 211 Michener, p. 399.
- 212 Krause, et al. v. Rhodes, et al., June 12, 1975.
- 213 Stone, p. 99.
- 214 Krause, et al. v. Rhodes, et al., June 11, 1975.
- 215 Krause, et al. v. Rhodes, et al., July 22, 1975.

WAS THERE A SNIPER?

- ¹Scranton Report, p. 281.

²Krause, et al. v. Rhodes, et al., June 30, 1975.

³The photographs included in the album attachment to this paper indicate this. See Photograph 24 in particular.

⁴Kent State University Archives, papers of Robert Urban, Box 2, Folder 21.

⁵Krause, et al. v. Rhodes, et al., July 23, 1975.

⁶Krause, et al. v. Rhodes, et al., July 23, 1975.

⁷Krause, et al. v. Rhodes, et al., July 23, 1975.

⁸Krause, et al. v. Rhodes, et al., June 30, 1975.

⁹Krause, et al. v. Rhodes, et al., July 21, 1975.

¹⁰Stone, p. 88.

¹¹Krause, et al. v. Rhodes, et al., July 10, 1975.

¹²Stone, p. 94.

¹³Krause, et al. v. Rhodes, et al., July 5, 1975.

¹⁴Stone, p. 88.

¹⁵Krause, et al. v. Rhodes, et al., August 13, 1975.

¹⁶Stone, p. 94.

¹⁷Krause, et al. v. Rhodes, et al., July 9, 1975.

¹⁸Krause, et al. v. Rhodes, et al., August 4, 1975.

¹⁹Krause, et al. v. Rhodes, et al., July 21, 1975.

²⁰Krause, et al. v. Rhodes, et al., June 30, 1975.

²¹Krause, et al. v. Rhodes, et al., July 10, 1975.

²²Krause, et al. v. Rhodes, et al., July 17, 1975.

²³Stone, p. 94.

²⁴Krause, et al. v. Rhodes, et al., June 25, 1975.

²⁵Krause, et al. v. Rhodes, et al., July 8, 1975.

²⁶Krause, et al. v. Rhodes, et al., July 8, 1975.

- ²⁷Krause, et al. v. Rhodes, et al., August 3, 1975.
- ²⁸U. S. v. Shafer, et al., November 6, 1974.
- ²⁹U. S. v. Shafer, et al., November 6, 1974.
- ³⁰U. S. v. Shafer, et al., June 18, 1974.
- ³¹U. S. v. Shafer, et al., November 5, 1974.
- ³²U. S. v. Shafer, et al., November 6, 1974.
- ³³U. S. v. Shafer, et al., November 1, 1974.
- ³⁴U. S. v. Shafer, et al., November 6, 1974.
- ³⁵U. S. v. Shafer, et al., November 1, 1974.
- ³⁶U. S. v. Shafer, et al., November 1, 1974.
- ³⁷Krause, et al. v. Rhodes, et al., May 28, 1974.
- ³⁸U. S. v. Shafer, et al., November 5, 1974.
- ³⁹U. S. v. Shafer, et al., November 6, 1974.
- ⁴⁰U. S. v. Shafer, et al., November 6, 1974.
- ⁴¹Krause, et al. v. Rhodes, et al., July 9, 1974.
- ⁴²U. S. v. Shafer, et al., November 6, 1974.
- ⁴³U. S. v. Shafer, et al., November 5, 1974.
- ⁴⁴U. S. v. Shafer, et al., November 6, 1974.
- ⁴⁵U. S. v. Shafer, et al., November 6, 1974.
- ⁴⁶U. S. v. Shafer, et al., November 1, 1974.
- ⁴⁷U. S. v. Shafer, et al., October 31, 1974.
- ⁴⁸Krause, et al. v. Rhodes, et al., August 11, 1975.
- ⁴⁹U. S. v. Shafer, et al., November 5, 1974.
- ⁵⁰Krause, et al. v. Rhodes, et al., July 31, 1975.
- ⁵¹Michener, p. 286.
- ⁵²Scranton hearings, August 21, 1970.

⁵³ Scranton Report, p. 281.

⁵⁴ Minority Report, Vol. 4, p. 245.

⁵⁵ "Doctor Claims KSU Victim Hit by 'Non-Military' Bullet," Akron Beacon-Journal, May 9, 1970, Sec. 1, p. 1.

⁵⁶ Michener, p. 396.

⁵⁷ Scranton Report, pp. 282-283.

⁵⁸ Davies, p. 173.

⁵⁹ Krause, et al. v. Rhodes, et al., June 11, 1975.

⁶⁰ There is a notation to that effect in the transcript of Krause, et al. v. Rhodes, et al., August 13, 1975.

⁶¹ Krause, et al. v. Rhodes, et al., August 19, 1975.

⁶² Alan Stang, Attack on the Guard, American Opinion, 5 {1974}, 19.

⁶³ "Tests Wound KSU Sniper Theories," Akron Beacon-Journal, May 10, 1970, Sec. 1, p. 1.

⁶⁴ Krause, et al. v. Rhodes, et al., July 16, 1975.

⁶⁵ Michener, pp. 382-385.

⁶⁶ Michener, p. 411.

⁶⁷ Krause, et al. v. Rhodes, et al., June 30, 1975.

⁶⁸ Krause, et al. v. Rhodes, et al., August 14, 1975.

⁶⁹ U. S. v. Shafer, et al., November 6, 1974.

⁷⁰ Krause, et al. v. Rhodes, et al., June 30, 1975.

⁷¹ Krause, et al. v. Rhodes, et al., June 4, 1975.

⁷² Krause, et al. v. Rhodes, et al., July 9, 1975.

⁷³ Krause, et al. v. Rhodes, et al., July 5, 1975.

⁷⁴ Krause, et al. v. Rhodes, et al., June 16, 1975.

⁷⁵ Krause, et al. v. Rhodes, et al., July 3, 1975.

⁷⁶ Krause, et al. v. Rhodes, et al., July 10, 1975.

- 77 Stone, pp. 89-90.
- 78 Scranton hearings, August 21, 1970.
- 79 Scranton Report, pp. 279-280.
- 80 Michener, pp. 286-288.
- 81 "Tragedy In Our Midst: A Special Report," Akron Beacon-Journal, May 24, 1970, Sec. 1, p. 19. Hereafter, this document shall be referred to as "ABJ Special Report."
- 82 ABJ Special Report, Sec. 1, p. 19.
- 83 Eszterhas and Roberts, p. 169.
- 84 Eszterhas and Roberts, p. 169.
- 85 Eszterhas and Roberts, pp. 169-170.
- 86 Eszterhas and Roberts, p. 170.
- 87 Krause, et al. v. Rhodes, et al., August 18, 1975.
- 88 Krause, et al. v. Rhodes, et al., July 10, 1975.
- 89 Krause, et al. v. Rhodes, et al., July 29, 1975.
- 90 Krause, et al. v. Rhodes, et al., July 17, 1975.
- 91 Krause, et al. v. Rhodes, et al., August 12, 1975.
- 92 Krause, et al. v. Rhodes, et al., August 19, 1975.
- 93 Krause, et al. v. Rhodes, et al., August 19, 1975.
- 94 Krause, et al. v. Rhodes, et al., July 21, 1975.
- 95 Scranton Report, p. 283.
- 96 Grant and Hill, pp. 18-19.
- 97 Stone, pp. 83-85.
- 98 Scranton Report, p. 283.
- 99 Krause, et al. v. Rhodes, et al., June 30, 1975.
- 100 Krause, et al. v. Rhodes, et al., August 18, 1975.

P H O T O A L B U M

- to -

12.54 SECONDS: WAS THE
KENT STATE SHOOTING JUSTIFIED?

- by -

MICHAEL ALLEN MELLO

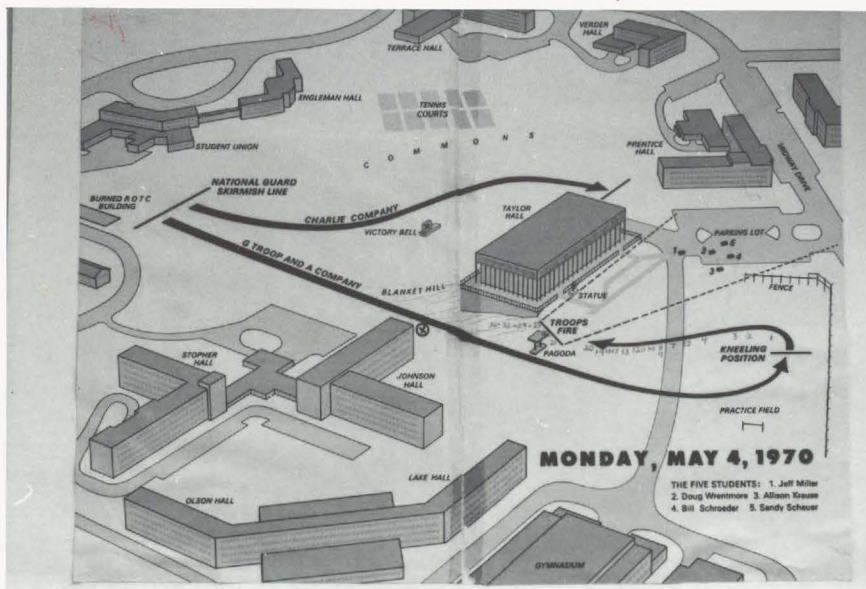
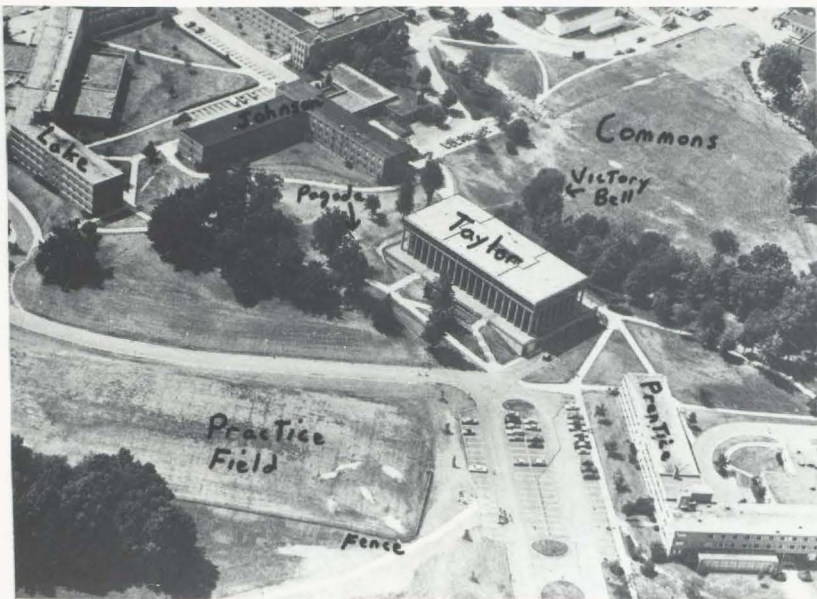
P H O T O A L B U M

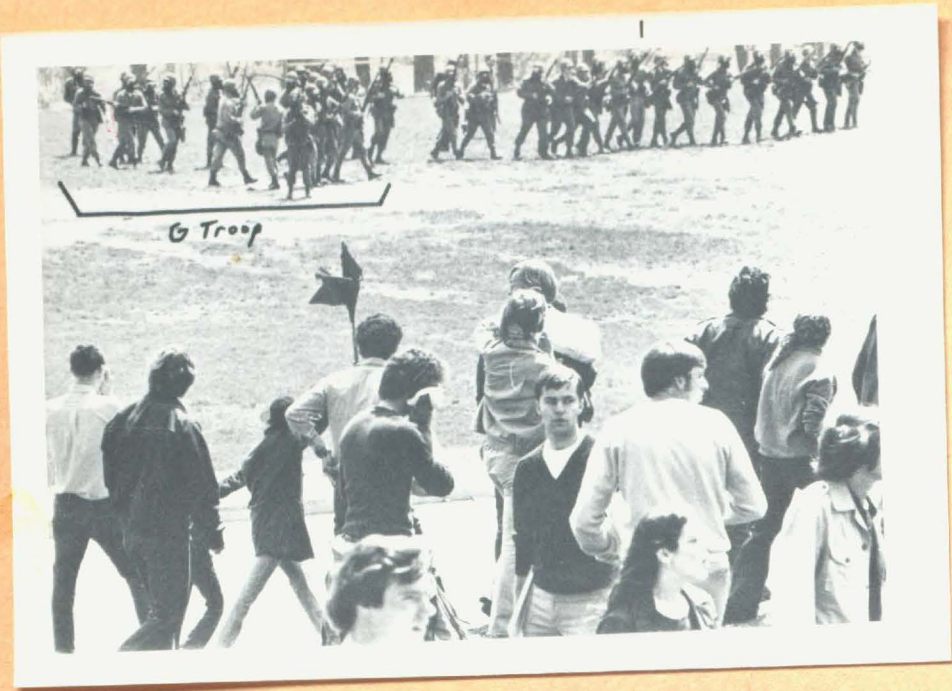
- to -

12.54 SECONDS: WAS THE
KENT STATE SHOOTING JUSTIFIED?

- by -

MICHAEL ALLEN MELLO

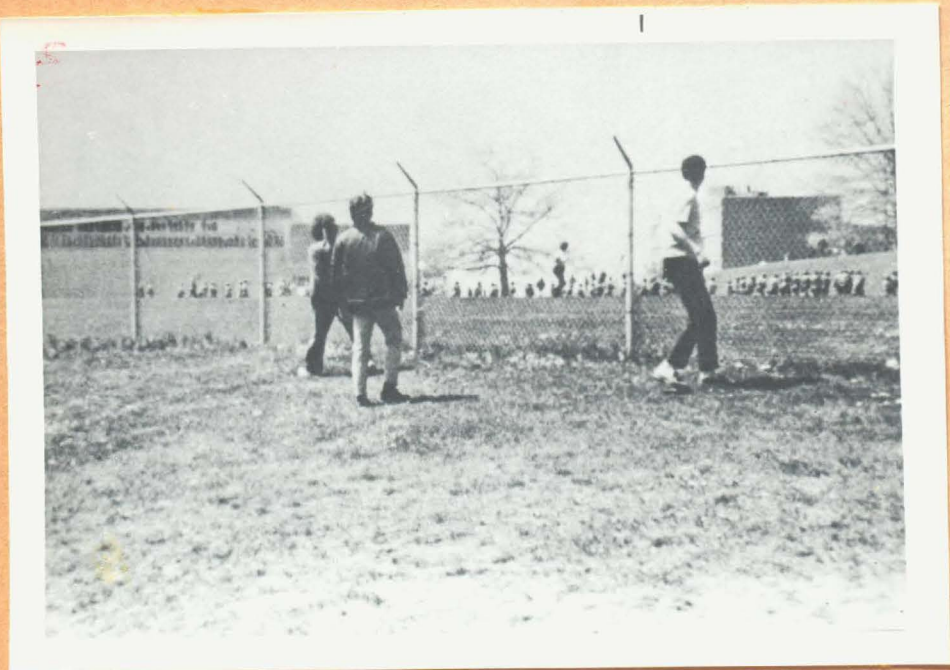




1

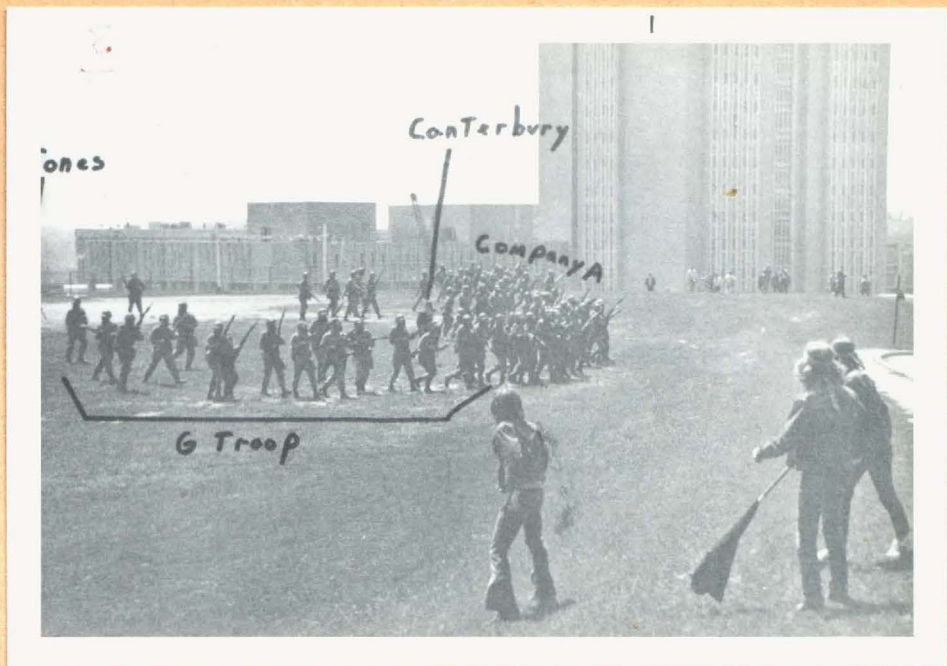


2



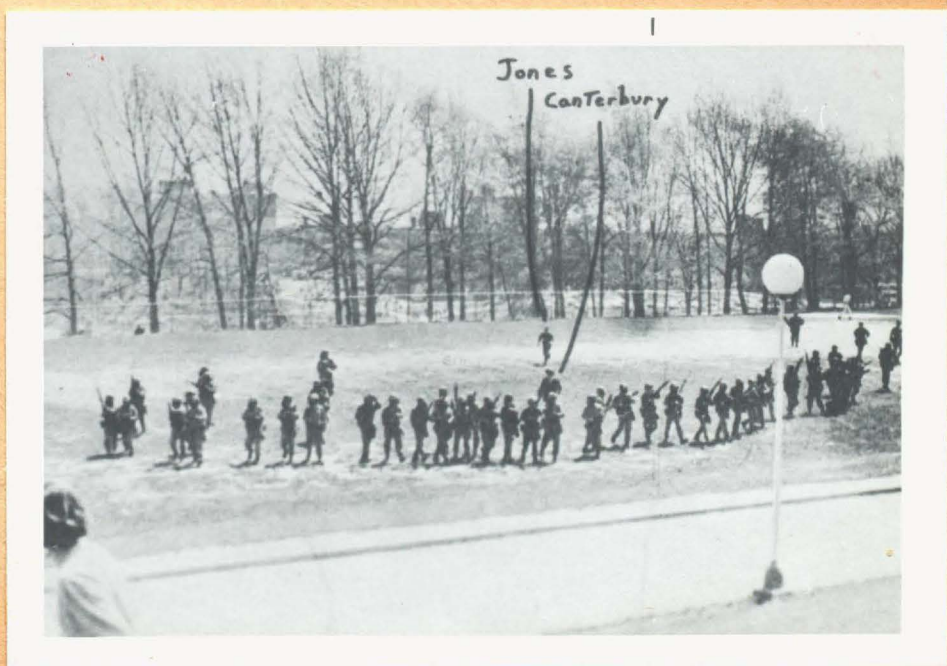
3

4



5

6





7



8



9

10



John
Cleary

11



12





13



14



John
Cleary

15

16



17



18



19



19

20



21

22

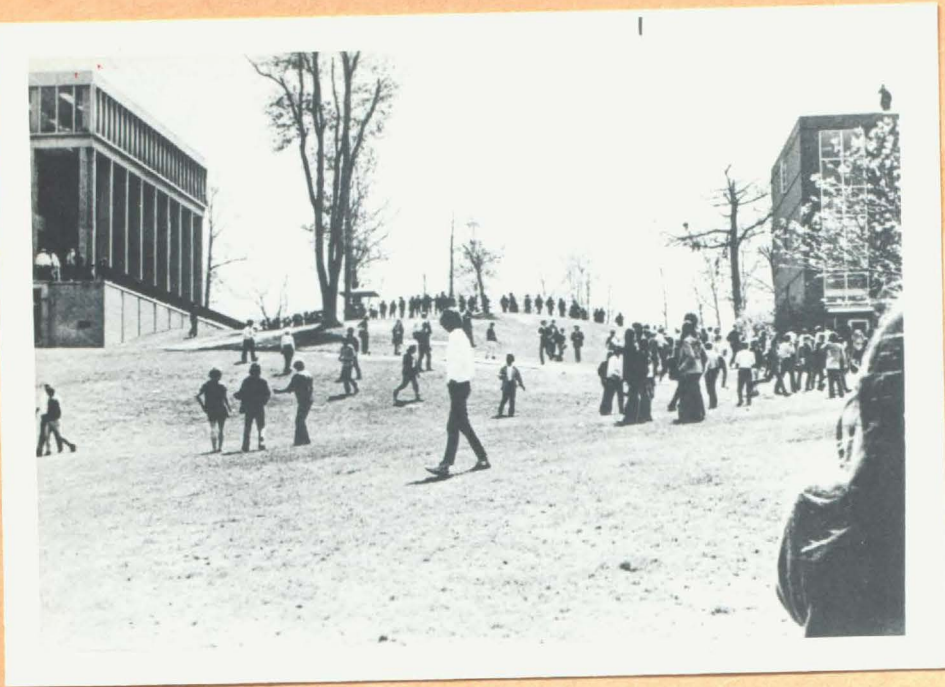


23



24





25

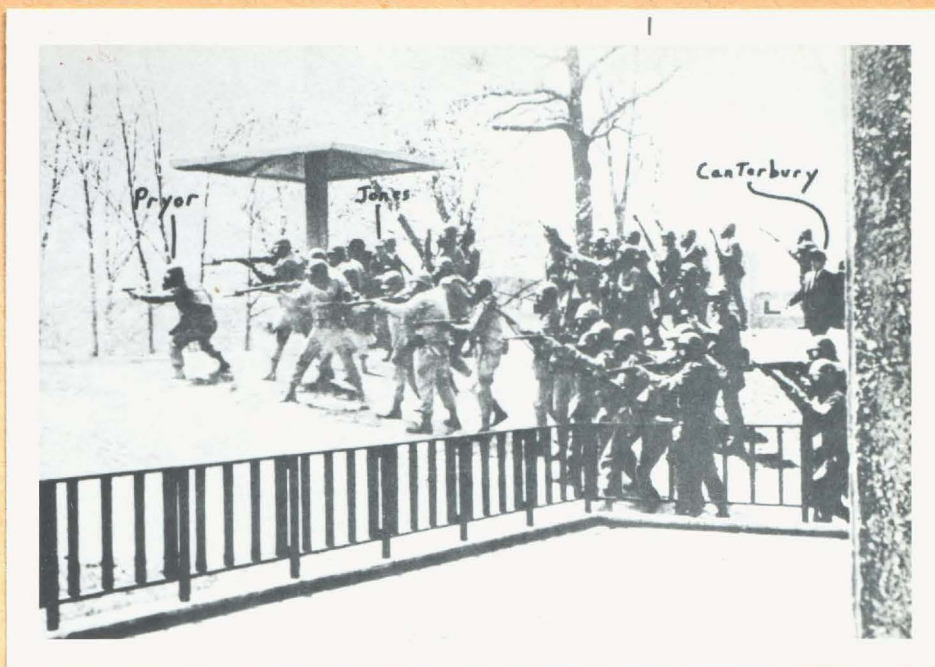


26



27

28

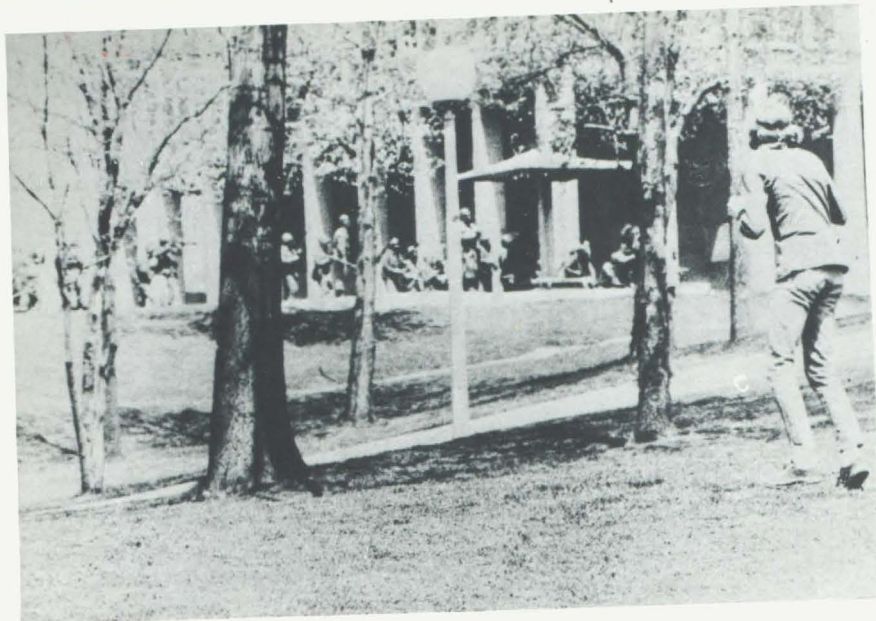


29



30

{blank}



31



32

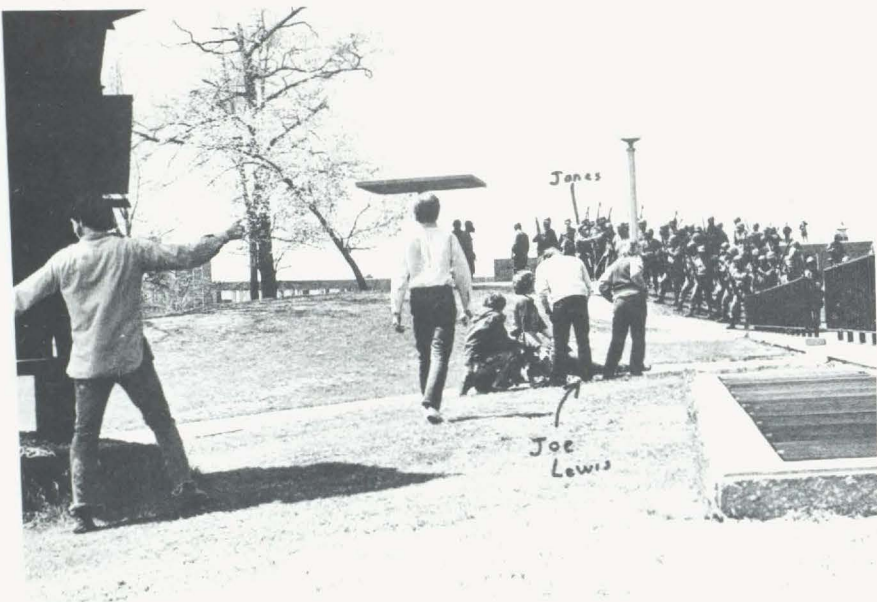


33

34



35



↓ Johnson
Hall

36



37



38



